

# EXHIBIT 2

**Foster, Dana**

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**From:** Andrew Caine <acaine@pszjlaw.com>  
**Sent:** Thursday, July 07, 2016 7:33 PM  
**To:** Foster, Dana  
**Subject:** CC/State of Illinois v. Hitachi, Ltd. - Responses and Objections to Foreign Subpoena/Subpoena Duces Tecum  
**Attachments:** IL v. Hitachi Responses.pdf

Dana –

Attached is a courtesy copy of the Trust's Responses and Objections that were served today.

Best,

Andy

Andrew Caine  
Pachulski Stang Ziehl & Jones LLP  
Direct Dial: 310.772.2357  
Tel: 310.277.6910 | Fax: 310.201.0760  
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IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

File No. CL16-2739-2

V.

**Defendants.**

copy of the Subpoena, in the form in which it was purportedly served on counsel for the Trust (rather than the Trust itself), is attached hereto as **Exhibit A.**<sup>1</sup>

### **PRELIMINARY STATEMENT**

Before its liquidation at the height of the financial crisis in 2008–09, Circuit City Stores, Inc. (together with its affiliated companies, “Circuit City”) was a retailer of electronic products. On November 10, 2008, Circuit City sought relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”). On September 10, 2010, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law and Order Confirming Modified Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors* (the “Confirmation Order”), which, *inter alia*, established the Trust and appointed the Trustee.

The Trust is a creation of the Bankruptcy Court. *See generally Barton v. Barbour*, 104 U.S. 126 (1881). It carries on no trade or commerce; rather, the Trust exists solely for the limited purposes set out in the Confirmation Order. The Trust maintains custody of certain of Circuit City’s books and records, and employs a limited staff for the purpose of liquidating assets and resolving claims against the debtors, in order to maximize the distribution on claims against the bankruptcy estates. Consistent with the Confirmation Order and subject to the ongoing supervision of the Bankruptcy Court, the Trust is a party to legacy litigation involving claims that previously belonged to Circuit City. One such proceeding is the federal multidistrict litigation styled *In re Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 07-5944 JST, MDL 1917 (N.D. Cal.) (the “CRT Action”). The Trust was previously a plaintiff in the CRT

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<sup>1</sup> Toshiba’s failure to properly serve the Trust itself, rather than counsel for the Trust, is one of the multiple defects in the Subpoena. By filing these responses and objections, the Trustee does not waive – and specifically preserves – all procedural and substantive objections.



Action, but is no longer a party to the CRT Action (having settled all of its claims with all defendants – including Toshiba). Toshiba was and apparently remains a defendant in the CRT Action as to claims of plaintiffs other than the Trust.

During the time period that the Trust was involved in the CRT Action, the Trust complied with discovery obligations imposed by the Federal Rules of Civil Procedure. Among other things, the Trust produced voluminous documents to the defendants in the CRT Action, including Toshiba. The Trust also gave corporate deposition testimony, pursuant to Federal Rule of Civil Procedure 30(b)(6), at the behest of defendants in the CRT Action, including Toshiba. Providing affirmative discovery – especially deposition testimony – in connection with the CRT Action was a costly and cumbersome task, given the Trust's few employees. Ultimately the Trust hired outside consultants, at significant expense, to facilitate the Trust's compliance with its discovery obligations in the CRT Action.

The Subpoena essentially seeks a "do over" of discovery the Trust provided in the CRT Action, on account of an Illinois rule that prohibits the use of deposition testimony at trial unless the deposition was specially designated as a trial deposition. Thus, even though Toshiba actively participated in discovery in the CRT Action, and apparently had the ability to make the appropriate Illinois designation(s) at the time, Toshiba now allegedly finds itself unable to use that discovery in connection with the Illinois Action.<sup>2</sup> As a result, Toshiba sought the issuance

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<sup>2</sup> See *Memorandum Opinion and Order* (attached hereto as **Exhibit B**) (order in a different but substantially similar action pending in the Circuit Court of Cook County, Illinois, denying Toshiba's request to use federal deposition testimony given Toshiba's failure to properly notice the federal deposition testimony as an "evidence deposition" under Illinois Supreme Court Rule 202).

of the Subpoena to compel the Trust to provide the very same testimony that the Trust – at significant cost – already provided years ago.<sup>3</sup>

The Trust is not a party to the Illinois Action and has neither the appropriate resources nor the appropriate personnel to respond to the burdensome requests embodied in the Subpoena. The Trustee has endeavored to cooperate with Toshiba with regard to the Subpoena, and (as set out in more detail below) is willing to produce to Toshiba all documents that the Trust produced in the CRT Action. What the Trust is unable to do, however, is undertake the unduly burdensome task of, and incur the significant expense associated with, hiring and educating a witness to testify regarding the 18 overly broad “Matters Upon Which Examination Is Requested” listed in the Subpoena. None of the Trust’s few remaining employees have the knowledge necessary to give sworn testimony on the myriad deposition topics included in the Subpoena. As such, compliance with the deposition component of the Subpoena would require the Trustee to hire and educate a consultant for the sole purpose of providing non-party deposition testimony. That is not an appropriate use of a non-party Subpoena, and it is especially objectionable here given that Toshiba’s alleged need for a “do over” is a problem of Toshiba’s own making.

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<sup>3</sup> Significantly, in the CRT Action, the Trustee was served with a deposition notice (a copy of which is attached hereto as **Exhibit C**) (the “CRT Notice”), which covered all but one of the deposition topics in the Subpoena (indeed, 16 of the 18 the “Matters Upon Which Examination is Requested” are copied verbatim, or nearly verbatim, from the CRT Notice). The Trustee hired a consultant and worked extensively with counsel to prepare the consultant as a corporate representative who ultimately gave deposition testimony (the “CRT Deposition”). As reflected in the transcript of the CRT Deposition (attached hereto as **Exhibit D**), counsel for Toshiba attended the CRT Deposition and examined the deponent at length.

**GENERAL OBJECTIONS**

1. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that it was served without leave of the Bankruptcy Court and purports to command and direct the Trustee's use of Trust resources for purposes inconsistent with the Confirmation Order in usurpation of the power and authority of the Bankruptcy Court.

2. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that it was not properly served on the Trustee or the Trust. The Subpoena is addressed to "Circuit City Stores, Inc. Liquidating Trust c/o Tavenner & Beran, PLC" and was delivered to the Trustee's counsel, who was not and is not authorized to accept service of the Subpoena.

3. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that it is inconsistent with the *Settlement and Release* dated December 2, 2014 (the "CRT Settlement Agreement") between the Trustee and Toshiba, which definitively compromised and resolved the parties' relationship to each other vis-à-vis the CRT Action. The CRT Settlement Agreement contains a standard integration clause (under which the Settlement Agreement is the complete and definitive agreement between Toshiba and the Trust with regard to matters pertaining to the CRT Action), and the Settlement Agreement contains no requirement that the parties cooperate further with each other by providing testimony and evidence in related litigation (even though such further cooperation provisions are often found in settlement agreements).<sup>4</sup>

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<sup>4</sup> The Trustee has not attached the Settlement Agreement because it is designated as Confidential. The Settlement Agreement was submitted to the Bankruptcy Court under seal, and the Bankruptcy Court approved all provisions of the Settlement Agreement.

4. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that the Subpoena does not comply with the State of Illinois's requirements for issuance of a subpoena. The Illinois form subpoena attached as the last page of the Subpoena (*i.e.*, the last page of Exhibit A hereto) is designed for use in securing testimony within the State of Illinois itself, as it is a fill-in-the-blanks form that commands the recipient "to appear and give your deposition testimony before a Notary Public at: [blank], in Room [blank], [blank], Illinois." Toshiba's counsel struck out the word "Illinois" and filled in the rest of the blanks with a Virginia address. There is no indication that Toshiba sought or secured the issuance of letters rogatory.

5. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that the Subpoena does not comply with Virginia's requirements for issuance of a subpoena pursuant to the Uniform Interstate Deposition & Discovery Act.

6. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that compliance therewith would subject the Trustee, a non-party, to undue burden or expense. *See* Va. Sup. Ct. R. 4:1(c) & 4:9A(c).

7. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that the requested non-party discovery is disproportionate to the legitimate needs of the requesting parties given the facts and circumstances here. *See* Va. Sup. Ct. R. 4:1(b)(1).

8. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that it is entirely duplicative of discovery previously provided by the Trustee in the CRT Action. It is unfair and inequitable to require the Trustee to produce

the same exact evidence again, at significant expense, on account of Toshiba's unilateral failure to comply with Illinois procedural requirements.

9. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that the same topics set out in the Subpoena were first set out in the CRT Notice, and during the meet-and-confer process in the CRT Action were subsequently narrowed and cabined. It is unfair and inequitable to require the Trustee to respond to the overly broad and burdensome topics set out in the Subpoena when those same overly broad and burdensome topics were previously narrowed by agreement of the parties in the CRT Action.

10. The Trustee objects to the Subpoena, including each and every component thereof and request therein, on the ground that the "Relevant Period" is defined by the Subpoena to span more than twelve years, a time period that is overbroad, oppressive, and unduly burdensome.

11. The Trustee objects to the Subpoena, including each and every component thereof and request therein, to the extent it seeks to impose upon the Trustee obligations greater than, or otherwise different from, those imposed by Code of Virginia, the Rules of the Supreme Court of Virginia, and/or any other applicable law, rule, or court order.

12. The Trustee objects to the Subpoena, including each and every component thereof and request therein, to the extent it seeks the disclosure of documents or information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or doctrine. The Trustee has not authorized the waiver of any such privilege or doctrine, and therefore any inadvertent disclosure of privileged information by counsel is unauthorized and shall not operate as a waiver.

13. The Trustee objects to the Subpoena, including each and every component thereof and request therein, to the extent it seeks any document or information that (a) is already in the possession, custody, or control of Toshiba or another defendant in the Illinois Action; (b) is not within the Trustee's possession, custody, or control; and/or (c) can more readily, conveniently, and in a less burdensome fashion be obtained from others.

**SPECIFIC OBJECTIONS AND RESPONSES**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:**

All Documents produced by You in *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 07-5944 JST, MDL 1917 (N.D. Cal.).

**RESPONSE/OBJECTION TO REQUEST FOR PRODUCTION NO. 1:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. Subject to and without waiving its General Objections, the Trustee is willing to produce the documents previously produced in the CRT Action.

**LIST OF MATTERS UPON WHICH EXAMINATION IS REQUESTED**

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 1:**

Your overall corporate structure, including the identification of departments within Circuit City responsible for the purchase, sale, pricing, marketing, or distribution of CRT Finished Products and their functions and the identification of any individuals that had managerial responsibility for the purchase, sale, pricing, marketing, or distribution of CRT Finished Products.

**RESPONSE/OBJECTION TO MATTER NO. 1:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the

ground that it requires detailed testimony about the "corporate structure" of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 2:**

The identity and general description of the CRT Finished Products You purchased, sold, marketed, or distributed.

**RESPONSE/OBJECTION TO MATTER NO. 2:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about products once sold by an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 3:**

The identity of the Defendants from whom you purchased CRT Finished Products, and the identity and amount of CRT Finished Products You purchased from them (by year, in units, and U.S. dollars), if any.

**RESPONSE/OBJECTION TO MATTER NO. 3:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about vendors from which purchases were made by an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 4:**

The identity of any non-Defendant manufacturers, producers, or distributors from whom You purchased CRT Finished Products, and the identity and amount of CRT Finished Products (by year, in units, and U.S. dollars) that You purchased from them, if any.

**RESPONSE/OBJECTION TO MATTER NO. 4:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about manufacturers or distributors from which purchases were made by an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 5:**

Circuit City's purchase or acquisition of CRT Finished Products.

**RESPONSE/OBJECTION TO MATTER NO. 5:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it is hopelessly vague and indefinite.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 6:**

The factors Circuit City considered in determining (a) from which Defendant(s) or non-Defendant(s) to purchase CRT Finished Products, and (b) which CRT Finished Products to purchase from particular Defendants and non-Defendants, including but not limited to the vendor qualification process and new model reviews.



**RESPONSE/OBJECTION TO MATTER NO. 6:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about the acquisition strategy of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 7:**

The process by which You negotiated, entered into, approved, or ratified purchase agreements or contracts for CRT Finished Products, including: (a) Your policies and practices regarding the negotiation of terms and conditions of such sales contracts; (b) use of standardized sales or purchase contracts; (c) use of "MFN" (Most Favored Nation) or "MFC" (Most Favored Company) clauses or similar price-protection clauses; (d) the use of dealer agreements; and (e) the identity and location of documents that relate to the matters specified in this topic.

**RESPONSE/OBJECTION TO MATTER NO. 7:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about the acquisition strategy and related corporate policies of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 8:**

Circuit City's sales of CRT Finished Products, including:

- (a) the overall sales volume (by units and dollar value);
- (b) the sales volume in Illinois (by units and dollar value);

- (c) the price quoted and received for each sale (including any discounts, rebates, and other terms of sale);
- (d) the date and quantity of each sale; and
- (e) the person(s) to whom such CRT Finished Products were sold.

**RESPONSE/OBJECTION TO MATTER NO. 8:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it is hopelessly vague and indefinite, apparently requiring the Trustee to itemize every CRT product sale (e.g., television sets and computer monitors) made to every customer who ever bought anything from a retailer (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 9:**

Your policies and practices for setting the price at which You sold CRT Finished Products to Your customers.

**RESPONSE/OBJECTION TO MATTER NO. 9:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about the pricing strategy and related corporate policies of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 10:**

Your participation in any discounts, promotions, rebates, or advertising cooperative programs provided or sponsored by any Defendant or non-Defendant from whom You purchased CRT Finished Products.

**RESPONSE/OBJECTION TO MATTER NO. 10:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about the pricing strategy and related corporate policies of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 11:**

Your use of discounts, promotions, rebates or loyalty programs in connection with the sale of CRT Finished Products to Your customers, including how You recorded such discounts or rebates, and the identity and location of documents or data recording such discounts or rebates.

**RESPONSE/OBJECTION TO MATTER NO. 11:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about the pricing strategy and related corporate policies of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 12:**

How Circuit City's CRT Finished Products were marketed for sale, including whether factors other than price were evident in the marketing materials and how the marketing strategy was determined and implemented for the CRT Finished Products sold.

**RESPONSE/OBJECTION TO MATTER NO. 12:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about the marketing strategy and related corporate policies of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 13:**

Other products that You believed were viewed by Your customers as alternatives to CRT Finished Products, including: (a) products other than CRT Finished Products; (b) the reasons that You believe Your customers viewed such products to be alternatives to the CRT Finished Products You purchased from the Defendants; (c) the extent to which these products had any effect on Your pricing decisions; and (d) the identity and location of documents that relate to the matters specified in this topic.

**RESPONSE/OBJECTION TO MATTER NO. 13:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it is hopelessly vague and indefinite, apparently requiring the Trustee to divine the expectations and motivations of retail customers with regard to product purchases from a retailer

(Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade.

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 14:**

All contracts or any other agreements relating to CRT Finished Products between Circuit City and any entity, including the terms and conditions of any such contracts or agreements, including the scope of the agreement, choice of law, and forum selection.

**RESPONSE/OBJECTION TO MATTER NO. 14:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about acquisition strategy and related corporate policies of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade, and further on the ground that it is hopelessly vague and indefinite in its use of the terms "any entity" and "any such contracts or agreements."

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 15:**

Explanation of whether, based on records maintained by Circuit City, it is possible to link, trace, or otherwise establish a relationship between the CRT Finished Products that Circuit City purchased to those that it sold and, if so, how.

**RESPONSE/OBJECTION TO MATTER NO. 15:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about corporate records and policies of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the

better part of a decade, and further on the ground that it is hopelessly vague and indefinite in its use of the phrase “link, trace, or otherwise establish a relationship.”

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 16:**

Your practices, policies, and procedures concerning Your market monitoring activity for CRT Finished Products, including the following: (a) Your competitive intelligence activities; (b) Your use of third-party data sources and market share/data analyses; and (c) Your knowledge, use, and tracking of Your competitors’ pricing for CRT Finished Products.

**RESPONSE/OBJECTION TO MATTER NO. 16:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about corporate policies and procedures of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade, and further on the ground that it is hopelessly vague and indefinite in its use of the terms “market monitoring activity,” “competitive intelligence activities,” and “third-party data sources and market share/data analyses.”

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 17:**

The extent to which Circuit City passed on its costs in purchasing or acquiring CRT Finished Products to its customers, including pricing practices and timing of price increases, but not including precise figures or total amounts of price margins.

**RESPONSE/OBJECTION TO MATTER NO. 17:**

The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires detailed testimony about acquisition, pricing, and marketing strategies and

related corporate policies of an entity (Circuit City) that is no longer in existence and has not engaged in business operations for the better part of a decade, and further on the ground that it is hopelessly vague and indefinite in its use of the phrase "passed on."

**MATTER UPON WHICH EXAMINATION IS REQUESTED NO. 18:**

The aggregate amount that You received to settle Your claims in the CRT MDL, including any claims relating to alleged overcharges for CRTs contained in CRT Finished Products You sold or distributed to Persons in Illinois.

**RESPONSE/OBJECTION TO MATTER NO. 18:**

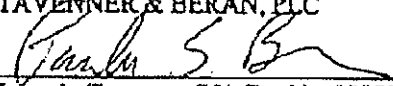
The Trustee repeats and re-alleges the Preliminary Statement and General Objections set out above as if fully set forth herein. In addition, the Trustee objects to this request on the ground that it requires testimony about confidential settlements – including settlements (such as the Trustee's settlement with Toshiba in the CRT Action) that were submitted under seal to the Bankruptcy Court and are the subject of sealing orders by the Bankruptcy Court.

**RESERVATION OF RIGHTS**

The Trustee reserves all rights to seek reimbursement of the fees and costs associated with the Subpoena, including fees and costs incurred in the preparation of these responses and objections, and to seek sanctions against Toshiba in any appropriate court.

Dated: July 7, 2016

TAVENNER & BERAN, PLC



Lynn L. Tavenner (VA Bar No. 30083)  
Paula S. Beran (VA Bar No. 34679)  
20 North Eighth Street, 2<sup>nd</sup> Floor  
Richmond, Virginia 23219  
(804) 783-8300

- and -

Andrew W. Caine, Esq.  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Telephone: (310) 227-6910

*Counsel to Alfred H. Siegel, as Trustee for the  
Circuit City Stores, Inc. Liquidating Trust*



## Exhibit A

**SUBPOENA/SUBPOENA DUCES TECUM  
TO PERSON UNDER FOREIGN SUBPOENA**  
Commonwealth of Virginia VA CODE §§ 8.01-412.8—8.01-412.15; Rule 4-9

File No. **CLIG-2739-2**

**Richmond --**

Circuit Court

**400 N. 9th Street Richmond Va 23219**

ADDRESS OF COURT

THE STATE OF ILLINOIS

v./In re: **HITACHI, LTD., et al.**

**TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:**

You are commanded to summon

**Circuit City Stores, Inc. Liquidating Trust c/o Tavaner & Beran, PLC**

NAME

**20 North Eighth Street, Second Floor**

STREET ADDRESS

**Richmond, Virginia 23219**

CITY

STATE

ZIP

**TO THE PERSON SUMMONED: You are commanded to**

☒ attend and give testimony at a deposition

☒ produce the books, documents, records, electronically stored information, and tangible things designated and described below

**See attached Notice of Discovery and Evidence Depositions and Document Subpoena**

**at 1320 East Cary Street, Richmond, VA 23219**

LOCATION

**at June 30, 2016 at 9:00 a.m.**

DATE AND TIME

and to permit inspection and copying by the requesting party or someone acting in his or her behalf of the designated items in your possession, custody or control

☐ permit inspection of the premises

at the following location

LOCATION

ON

DATE AND TIME

This subpoena is issued upon the request of the party named below

**Daniel Cummings**

NAME OF REQUESTING PARTY

**150 South Wacker Drive, Suite 3025**

STREET ADDRESS

**Chicago, IL 60608 (312) 372-2345**

CITY

STATE

ZIP

TELEPHONE NUMBER

12-CH-35286

The requesting party has submitted to this Clerk's Office the foreign subpoena, copy attached, the terms of which are incorporated herein, and the written statement required by Virginia Code § 8.01-412.10.

The names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of parties not represented by counsel are provided ☐ below ☒ on attached list.

6-14-16

DATE ISSUED

EDWARD F. JEWETT, Clerk

CLERK

by

*RV Gubane Johnson*  
DEPUTY CLERK

NAME OF ATTORNEY FOR REQUESTING PARTY

BAR NUMBER

LICENSING STATE

OFFICE ADDRESS

TELEPHONE NUMBER OF ATTORNEY

OFFICE ADDRESS

FACSIMILE NUMBER OF ATTORNEY

NAME

BAR NUMBER

LICENSING STATE

STREET ADDRESS

TELEPHONE NUMBER

STREET ADDRESS

FACSIMILE NUMBER

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FACSIMILE NUMBER

NAME

BAR NUMBER

LICENSING STATE

STREET ADDRESS

TELEPHONE NUMBER

STREET ADDRESS

FACSIMILE NUMBER

RETURN OF SERVICE (see page three of this form)

12-CH-35268

☐ This SUBPOENA/SUBPOENA DUCES TECUM TO PERSON UNDER FOREIGN SUBPOENA is being served by a private process server who must provide proof of service in accordance with Va. Code § 8.01-325.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the Clerk of Court.

|   |                          |
|---|--------------------------|
| NAME: _____   |                          |
| ADDRESS: _____  |                          |
| <input type="checkbox"/> PERSONAL SERVICE   | Tel. _____<br>No. _____  |
| Being unable to make personal service, a copy was delivered in the following manner:  |                          |
| <input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above:<br>_____<br>_____ |                          |
| <input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)  |                          |
| <input type="checkbox"/> not found  | _____, Sheriff           |
| DATE _____  | by _____, Deputy Sheriff |

Subpoena in a Civil Matter (For Testimony and/or Documents)

(This form replaces CCG N006 & CCG N014) (Rev. 6/25/09) CCG 0106

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE STATE OF ILLINOIS, by its Attorney General, Lisa Madigan

Plaintiff/Petitioner

HITACHI, LTD., et al.

Defendant/Respondent

SUBPOENA IN A CIVIL MATTER  
(For Testimony and/or Documents)

FILED-1  
2016 JUN 13 PM 2:42  
CIRCUIT COURT OF COOK  
COUNTY OF ILLINOIS  
LAW DIVISION

To: Circuit City Stores, Inc. Liquidating Trust c/o Tavenner & Breen, P.L.C.  
20 North Eighth Street, Second Floor  
Richmond, Virginia 23219

- ☐ 1. YOU ARE COMMANDED to appear to give your testimony before the Honorable \_\_\_\_\_  
in Room \_\_\_\_\_, Illinois on \_\_\_\_\_,  
at \_\_\_\_\_ m.
- ☒ 2. YOU ARE COMMANDED to appear and give your deposition testimony before a Notary Public at: Courtyard Richmond Downtown  
in Room \_\_\_\_\_, 1320 East Cary Street, Richmond, VA 23219, Illinois on June 30, 2016  
at 9:00 a.m. m.
- ☒ 3. YOU ARE COMMANDED to mail the following documents in your possession or control to William Bave, White & Case LLP  
at 1155 Avenue of the Americas New York, NY 10036, in electronic format to william.bave@whitecase.com, on or before June 30, 2016  
at 9:00 a.m. m.
- ~~(THIS IS FOR RECORDS ONLY. THERE WILL BE NO ORAL INTERROGATORIES.)~~  
See attached Notice of Discovery and Evidence Depositions and Document Subpoena

☒ Description continued on attached page(s).

YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Notice to Deponent:

- ☒ 1. The deponent is a public or private corporation, partnership, association, or governmental agency. The matter(s) on which examination is requested are as follows: See attached Notice of Discovery and Evidence Depositions and Document Subpoena

☒ Description continued on attached page(s).

(A nonparty organization has a duty to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Ill. Sup. Ct. Rule 206.)

- ☒ 2. The deponent's testimony will be recorded by use of an audio-visual recording device, operated by Victor M. Renteria, Jr., CLVS of Visual Discovery, Inc.  
(Name of Recording Device Operator)

3. No discovery deposition of any party or witnesses shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of the parties or by order upon showing that good cause warrants a lengthier examination. Ill. Sup. Ct. Rule 206(d).

Atty. No. 90707

Pro Se 99500

Name: Daniel Cummings

Issued by:

Atty. for: Toshiba Corporation and Toshiba America Electronic Components, Inc.

Signature

Address: 150 South Wacker Drive, Suite 3025

☒ Attorney

City/State/Zip: Chicago, IL 60606

☐ Clerk of Court

Telephone: (312) 372-2345

Date:

- ☐ I served this subpoena by mailing a copy, as required by Ill. Sup. Ct. Rules 11, 12 and 204(a)(2), to \_\_\_\_\_  
by certified mail, return receipt requested (Receipt # \_\_\_\_\_) on \_\_\_\_\_.  
I paid the witness \$ \_\_\_\_\_ for witness and mileage fees.
- ☐ I served this subpoena by handing a copy to \_\_\_\_\_ on \_\_\_\_\_.  
I paid the witness \$ \_\_\_\_\_ for witness and mileage fees.

(Signature of Server)

(Print Name)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

**FILED-1**  
**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**  
**COUNTY DEPARTMENT, CHANCERY DIVISION**  
2016 JUN 13 PM 2:54

STATE OF ILLINOIS, *ex rel.* Lisa Madigan,  
Attorney General,

Plaintiff,

v.

HITACHI, LTD., *et al.*,

Defendants.

CIRCUIT COURT OF COOK  
COUNTY OF ILLINOIS  
LAW DIVISION  
No. 12-CH-35266

Hon. Rita M. Novak

**LIST OF PARTIES AND ATTORNEYS**

**Plaintiff the State of Illinois, by its Attorney General, Lisa Madigan**

Blake Harrop  
Chadwick Brooker  
Antitrust Bureau  
OFFICE OF THE ILLINOIS ATTORNEY GENERAL  
100 West Randolph Street  
Chicago, Illinois 60601

**Defendants Hitachi, Ltd., Hitachi Electronic Devices (USA), Inc., and Hitachi Displays, Ltd.**

Kate Wheaton  
Karl Stampfl  
KIRKLAND & ELLIS  
300 North LaSalle Street  
Chicago, IL 60654

**Defendants Philips Electronics North America Corporation and Koninklijke Philips N.V.**

Jeffery Cross  
David C. Gustman  
Tonita M. Helton  
FREEBORN & PETERS LLP  
311 S. Wacker Drive, Suite 300  
Chicago, IL 60606

John M. Taladay  
Erik T. Koons  
Charles M. Malaise  
BAKER BOTTS LLP  
1299 Pennsylvania Avenue, NW  
Washington, DC 20004-2400

**Defendants Toshiba Corporation and Toshiba America Electronic Components, Inc.**

Dan Cummings  
Alan Madans  
ROTHSCHILD, BARRY & MYERS  
150 South Wacker Drive  
Suite 3025  
Chicago, IL 60606

Christopher M. Curran  
Lucius B. Lau  
Dana E. Foster  
WHITE & CASE  
701 Thirteenth Street, N.W.  
Washington, DC 20005

William H. Bave, III.  
WHITE & CASE  
1155 Avenue of the Americas  
New York, NY 10036

**Defendants Samsung SDI America, Inc. and Samsung Display Device Co., Ltd.**

Daniel G. Rosenberg  
Catherine B. Diggins  
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP  
Three First National Plaza  
70 West Madison Street, 48th Floor  
Chicago, Illinois 60602

Michael Scarborough  
Tyler M. Cunningham  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
4 Embarcadero Center, 17th Floor  
San Francisco, CA 94111

**Defendants Panasonic Corporation, Panasonic Corporation of North America, and MT  
Picture Display Co., Ltd.**

Duane M. Kelley  
James F. Herbison  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, IL 60601

Jeffrey L. Kessler  
Eva W. Cole  
Molly M. Donovan  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, New York 10166-4193

Steven A. Reiss  
David L. Yohai  
Adam C. Hemlock  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153-0119

**Defendants LG Electronics, Inc. and LG Electronics USA, Inc.**

Nathan P. Eimer  
David M. Simon  
EIMER STAHL LLP  
224 South Michigan Avenue, Suite 1100  
Chicago, IL 60604

Miriam Kim  
MUNGER, TOLLES & OLSON LLP  
560 Mission Street  
27th Floor  
San Francisco, California 94105-2907

Jessica Barclay-Strobel  
MUNGER, TOLLES & OLSON LLP  
355 South Grand Ave.  
35th Floor  
Los Angeles, California 90071



**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

**FILED-1**

**CIRCUIT COURT OF COOK  
COUNTY OF ILLINOIS  
LAW DIVISION**

STATE OF ILLINOIS, *ex rel.* Lisa Madigan,  
Attorney General,

Plaintiff,

v.

HITACHI, LTD., *et al.*,

Defendants.

No. 12-CH-35266

Hon. Rita M. Novak

**NOTICE OF RULE 206(a)(1) DISCOVERY AND EVIDENCE DEPOSITIONS AND  
DOCUMENT SUBPOENA**

TO: All Counsel of Record

PLEASE TAKE NOTICE that, pursuant to Rule 206(a)(1) of the Illinois Supreme Court Rules, Defendants Toshiba Corporation and Toshiba America Electronic Components, Inc., through counsel and in conjunction with all defendants, will take the discovery deposition, followed by the evidence deposition, of the person or persons designated by Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust ("Circuit City") to testify about the information known or reasonably available to Circuit City on the matters set forth in the attached Exhibit A. Circuit City is directed to produce the documents set forth in Exhibit B attached hereto.

The deposition will commence on June 30, 2016 at 9:00 a.m. at Courtyard Richmond Downtown, 1320 East Cary Street, Richmond, VA 23219. The deposition shall be recorded stenographically and a real-time transcription service such as LiveNote may also be available for the use of counsel. The deposition may also be recorded by sound or sound-and-visual means by

Victor M. Renteria, Jr., CLVS of Visual Discovery, Inc. The deposition will continue pursuant to the Illinois Supreme Court Rules or order of the Court.

Circuit City is advised that Rule 206(a)(1) requires it to produce one or more witnesses at the stated location and time who are knowledgeable and prepared to testify about each of the matters identified in the List of Matters on Which Examination is Requested attached hereto as Exhibit A. The designated witness or witnesses must be prepared to testify about matters known by or reasonably available to Circuit City, not just information personally known by the witness.

Dated: June 13, 2016

By: 

Daniel Cummings  
Alan Madans  
150 South Wacker Drive  
Suite 3025  
Chicago, IL 60606  
Telephone: (312) 372-2345  
Fax: 312-372-2350  
E-mail: cummings@rbmchicago.com  
madans@rbmchicago.com

Christopher M. Curran  
George L. Paul  
Lucius B. Lau  
Dana E. Foster  
White & Case  
701 Thirteenth Street, N.W.  
Washington, DC 20005  
Telephone: (202) 626-3600  
Email: ccurran@whitecase.com  
gpaul@whitecase.com  
alau@whitecase.com  
defoster@whitecase.com

*Counsel for Toshiba Corporation and Toshiba  
America Electronic Components, Inc.*

**EXHIBIT A**

**DEFINITIONS**

For the purposes of this Notice of Deposition, the following definitions apply:

1. "Any" shall be construed to mean "any and all."
2. "CRT" or "CRTs" means any (a) color picture tubes ("CPTs"), which are cathode ray tubes used primarily in color televisions, and (b) color display tubes ("CDTs"), which are used primarily in computer monitors.
3. "CRT Finished Product" or "CRT Finished Products" means televisions containing CPTs or computer monitors containing CDTs.
4. "Defendant" or "Defendants" means any of the entities currently or formerly named as defendants in this litigation and, without limitation, all of their past and present parents, subsidiaries, affiliates, joint ventures, officers, directors, employees, agents, attorneys, or representatives (and the parents', subsidiaries', affiliates', or joint ventures' past and present officers, directors, employees, agents, attorneys, or representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.
5. "Document(s)" has the broadest possible meaning permissible under Illinois Supreme Court Rule 214, including, but not limited to, any written, printed, typed, recorded, filmed, punched, transcribed, taped or other graphic matter of any kind or nature, however produced or reproduced, whether in hard copy, electronic, or other form, and includes, without limitation, pamphlets, brochures, books, booklets, information sheets, papers, articles, journals, magazines, computer printouts, Internet search results, tapes, discs or other forms of audio, visual or audio/visual recordings, records, memoranda, reports, financial statements, affidavits, handwritten and other notes, transcripts, paper, indices, letters, envelopes, telegrams, cables, electronic mail messages,

telex messages, telecopied messages, telephone messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars, product labels, prescriptions, package inserts or other information accompanying medications, maintenance or service records, appointment books, diaries, billing records, checks, bank account statements, invoices, photographs, microfilms, tapes or other records, punch cards, magnetic tapes, discs, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, recordings made through data processing techniques and the written information necessary to understand and use such materials, and any other Documents discoverable under the Illinois Supreme Court Rule 214.

6. "Person" means and includes all natural persons or entities, governmental units, partnerships, firms, corporations, associations, joint ventures, any other form of business organization or arrangement, or any form of public, private or legal entity.

7. "Relating to," "referring to," "regarding," or "with respect to" mean, without limitation, the following concepts: discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.

8. "Relevant Period" means March 1, 1995, to November 25, 2007.

9. "You," "Your," and "Circuit City" mean Circuit City Stores, Inc. and any other d/b/a's affiliated with Circuit City Stores, Inc., together with all present and former directors,

officers, employees, or agents of the entities listed in this Definition.

**LIST OF MATTERS UPON WHICH EXAMINATION IS REQUESTED**

1. Your overall corporate structure, including the identification of departments within Circuit City responsible for the purchase, sale, pricing, marketing, or distribution of CRT Finished Products and their functions and the identification of any individuals that had managerial responsibility for the purchase, sale, pricing, marketing, or distribution of CRT Finished Products.

2. The identity and general description of the CRT Finished Products You purchased, sold, marketed, or distributed.

3. The identity of the Defendants from whom you purchased CRT Finished Products, and the identity and amount of CRT Finished Products You purchased from them (by year, in units, and U.S. dollars), if any.

4. The identity of any non-Defendant manufacturers, producers, or distributors from whom You purchased CRT Finished Products, and the identity and amount of CRT Finished Products (by year, in units, and U.S. dollars) that You purchased from them, if any.

5. Circuit City's purchase or acquisition of CRT Finished Products.

6. The factors Circuit City considered in determining (a) from which Defendant(s) or non-Defendant(s) to purchase CRT Finished Products, and (b) which CRT Finished Products to purchase from particular Defendants and non-Defendants, including but not limited to the vendor qualification process and new model reviews.

7. The process by which You negotiated, entered into, approved, or ratified purchase agreements or contracts for CRT Finished Products, including: (a) Your policies and practices regarding the negotiation of terms and conditions of such sales contracts; (b) use of standardized

sales or purchase contracts; (c) use of "MFN" (Most Favored Nation) or "MFC" (Most Favored Company) clauses or similar price-protection clauses; (d) the use of dealer agreements; and (e) the identity and location of documents that relate to the matters specified in this topic.

8. Circuit City's sales of CRT Finished Products, including:

- (a) the overall sales volume (by units and dollar value);
- (b) the sales volume in Illinois (by units and dollar value);
- (c) the price quoted and received for each sale (including any discounts, rebates, and other terms of sale);
- (d) the date and quantity of each sale; and
- (e) the person(s) to whom such CRT Finished Products were sold.

9. Your policies and practices for setting the price at which You sold CRT Finished Products to Your customers.

10. Your participation in any discounts, promotions, rebates, or advertising cooperative programs provided or sponsored by any Defendant or non-Defendant from whom You purchased CRT Finished Products.

11. Your use of discounts, promotions, rebates or loyalty programs in connection with the sale of CRT Finished Products to Your customers, including how You recorded such discounts or rebates, and the identity and location of documents or data recording such discounts or rebates.

12. How Circuit City's CRT Finished Products were marketed for sale, including whether factors other than price were evident in the marketing materials and how the marketing strategy was determined and implemented for the CRT Finished Products sold.

13. Other products that You believed were viewed by Your customers as alternatives to CRT Finished Products, including: (a) products other than CRT Finished Products; (b) the reasons that You believe Your customers viewed such products to be alternatives to the CRT Finished Products You purchased from the Defendants; (c) the extent to which these products had any effect on Your pricing decisions; and (d) the identity and location of documents that relate to the matters specified in this topic.

14. All contracts or any other agreements relating to CRT Finished Products between Circuit City and any entity, including the terms and conditions of any such contracts or agreements, including the scope of the agreement, choice of law, and forum selection.

15. Explanation of whether, based on records maintained by Circuit City, it is possible to link, trace, or otherwise establish a relationship between the CRT Finished Products that Circuit City purchased to those that it sold and, if so, how.

16. Your practices, policies, and procedures concerning Your market monitoring activity for CRT Finished Products, including the following: (a) Your competitive intelligence activities; (b) Your use of third-party data sources and market share/data analyses; and (c) Your knowledge, use, and tracking of Your competitors' pricing for CRT Finished Products.

17. The extent to which Circuit City passed on its costs in purchasing or acquiring CRT Finished Products to its customers, including pricing practices and timing of price increases, but not including precise figures or total amounts of price margins.

18. The aggregate amount that You received to settle Your claims in the CRT MDL, including any claims relating to alleged overcharges for CRTs contained in CRT Finished Products You sold or distributed to Persons in Illinois.

**EXHIBIT B**  
**DEFINITIONS**

The applicable Definitions appear in Exhibit A.

**INSTRUCTIONS**

1. In responding to this subpoena, You are requested to produce all Documents in Your possession, custody, or control, wherever located.
2. All Documents should be produced as maintained in the ordinary course of business.
3. If any part of a Document is responsive to any Request herein, produce the entire Document, including any attachments or exhibits.
4. In the event that more than one copy of a Document exists, produce each copy on which there appears any notation or marking of any sort not appearing on any other copy (including routing or filing instructions) or any copy containing different attachments from any other copy.
5. If You withhold any Documents on a claim of privilege, You must provide a statement of the claim of privilege and all facts relied upon in support of that claim.
6. All electronically stored information shall be produced. Documents originating in paper or other hard copy format should be produced in 300 DPI Group IV Monochrome Tagged Image File Format (.TIFF or .TIF) files. TIFF files shall be produced in single-page format along with image load files (.DII file and .OPT file and .LPF file). All Documents are to be provided with multi-page searchable text (.TXT) files. These text files and image load files should indicate page breaks to the extent possible, as well as Production Number Begin, Production Number End, Production Attachment Range Number Begin, Production Attachment Range Number End, and Production Document Page Count. As well, each .TIFF image should be branded with the applicable Bates number and confidentiality designation (pursuant to the Protective Order, a copy of which is attached).



**REQUEST FOR PRODUCTION OF DOCUMENTS**

1. All Documents produced by You in *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 07-5944 JST, MDL 1917 (N.D. Cal.).

Subpoena in a Civil Matter (For Testimony and/or Documents)

(This form replaces CCG N006 & CCG N014) (Rev. 6/25/09) CCG 0106

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE STATE OF ILLINOIS, by its Attorney General, Lisa Madigan

Plaintiff/Petitioner

v.

HITACHI, LTD., et al.

Defendant/Respondent

No. 12-CH-35266

SUBPOENA IN A CIVIL MATTER  
(For Testimony and/or Documents)

To: Circuit City Stores, Inc. Liquidating Trust c/o Tavenner & Bran, PLC  
20 North Eighth Street, Second Floor  
Richmond, Virginia 23219

- ☐ 1. YOU ARE COMMANDED to appear to give your testimony before the Honorable \_\_\_\_\_  
in Room \_\_\_\_\_, Illinois on \_\_\_\_\_,  
at \_\_\_\_\_ m.
- ☒ 2. YOU ARE COMMANDED to appear and give your deposition testimony before a Notary Public at: Courtyard Richmond Downtown  
in Room \_\_\_\_\_, 1320 East Cary Street, Richmond, VA 23219, Illinois on June 30, 2016  
at 9:00 a.m. m.
- ☒ 3. YOU ARE COMMANDED to mail the following documents in your possession or control to William Bay, White & Case LLP  
at 1135 Avenue of the Americas New York, NY 10036, in electronic format to [william.bay@whitecase.com](mailto:william.bay@whitecase.com), on or before June 30, 2016  
at 9:00 a.m. m.  
(THIS IS FOR RECORDS ONLY. THERE WILL BE NO ORAL INTERROGATORIES.)  
See attached Notice of Discovery and Evidence Depositions and Document Subpoena

☒ Description continued on attached page(s).

YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Notice to Deponent:

- ☒ 1. The deponent is a public or private corporation, partnership, association, or governmental agency. The matter(s) on which examination is requested are as follows: See attached Notice of Discovery and Evidence Depositions and Document Subpoena

☒ Description continued on attached page(s).

(A nonparty organization has a duty to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Ill. Sup. Ct. Rule 206.)

- ☒ 2. The deponent's testimony will be recorded by use of an audio-visual recording device, operated by Victor M. Renteria, Jr., CLVS of Visual Discovery, Inc.  
(Name of Recording Device Operator)

3. No discovery deposition of any party or witnesses shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of the parties or by order upon showing that good cause warrants a lengthier examination. Ill. Sup. Ct. Rule 206(d).

Atty. No. 90707

Pro Se 99500

Name: Daniel Cummings

Issued by:

Atty. for: Toshiba Corporation and Toshiba America Electronic Components, Inc.

Signature

Address: 150 South Wacker Drive, Suite 3025

☒ Attorney

City/State/Zip: Chicago, IL 60606

☐ Clerk of Court

Telephone: (312) 372-2345

Date: \_\_\_\_\_

- ☐ I served this subpoena by mailing a copy, as required by Ill. Sup. Ct. Rules 11, 12 and 204(a)(1), to \_\_\_\_\_  
by certified mail, return receipt requested (Receipt # \_\_\_\_\_) on \_\_\_\_\_.  
I paid the witness \$ \_\_\_\_\_ for witness and mileage fees.
- ☐ I served this subpoena by handing a copy to \_\_\_\_\_ on \_\_\_\_\_.  
I paid the witness \$ \_\_\_\_\_ for witness and mileage fees.

(Signature of Server)

(Print Name)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

**Exhibit B**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

THE STATE OF ILLINOIS, by its  
Attorney General, Lisa Madigan,

Plaintiff,

v.

AU OPTRONICS CORPORATION;  
AU OPTRONICS CORP. AMERICA,  
INC.; CHI MEI INNOLUX CORP.;  
CHI MEI OPTOELECTRONICS  
CORP. USA, INC.; CMO JAPAN  
COMPANY, LTD.; EPSON IMAGING  
DEVICES CORP.; EPSON  
ELECTRONICS AMERICA, INC.;  
HITACHI, LTD.; HITACHI DISPLAYS  
LTD.; HITACHI AMERICA, LTD.;  
HITACHI ELECTRONIC DEVICES  
USA, INC.; LG DISPLAY CO., LTD.;  
LG DISPLAY AMERICA, INC.;  
SAMSUNG ELECTRONICS CO., LTD.;  
SAMSUNG SEMICONDUCTOR, INC.;  
SAMSUNG ELECTRONICS AMERICA  
INC.; SHARP CORP.; SHARP  
ELECTRONICS CORP.; TOSHIBA  
CORP.; TOSHIBA AMERICA  
ELECTRONIC COMPONENTS, INC.;  
TOSHIBA MOBILE DISPLAY CO.;  
and TOSHIBA AMERICA  
INFORMATION SYSTEMS, INC.,

Defendants.

Case No. 10-CH-34472

Judge Moshe Jacobius

**MEMORANDUM OPINION AND ORDER**

This matter comes before the Court on Defendants' Renewed Motion to Permit the Use  
of MDL Fact Witness Depositions as Evidence Depositions.<sup>1</sup> The Court has reviewed the

<sup>1</sup> The Court notes that the AU Optronics Defendants (AU Optronics Corp. and AU Optronics Corp. America) have withdrawn their participation from the instant motion pursuant to stipulation between the State and the AU Optronics Defendants; all other Defendants remain party to the instant motion.

foregoing motion and Defendants' memorandum in support thereof ("MTP"), as well as the State of Illinois' Response ("Resp."), the Defendants' Reply ("Reply"), and all the parties' respective exhibits thereto. The Court has also considered the oral arguments of counsels and relevant legal authorities.

### Background

The underlying allegations of this long-pending case have been discussed at length in previous Orders and thus need not be recited again in great detail.<sup>2</sup> In late 2006, the public learned of a price-fixing investigation being conducted by the United States Department of Justice. The investigation centered on allegations that manufacturers of thin-film transistor liquid crystal display ("LCD") panels had held unlawful meetings for the purpose of fixing the prices and output of LCD panels throughout the United States, including in Illinois. The price fixing allegedly occurred between November 30, 1998, and December 11, 2006, during which time the State of Illinois and Illinois consumers purportedly paid artificially inflated prices for LCD panels.

After the investigation became public, a torrent of litigation ensued, with hundreds of civil actions filed in United States district courts throughout the country. To promote the efficient adjudication of those cases, the federal matters were consolidated in the United States District Court for the Northern District of California under the caption *In re: TFT-LCD (Flat Panel) Antitrust Litigation*, Case No. 3:07-MD-1827 SI, MDL No. 1827 (N.D. Cal.) (the "multidistrict litigation"). The Honorable Judge Susan Illston has presided over the multidistrict litigation since 2006, and ultimately certified two class actions therein. The first class consisted of entities that were direct purchasers of LCD panels (e.g., entities that utilize LCD panels as components of other products). The second class consisted of indirect purchasers of LCD

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<sup>2</sup> See, e.g., this Court's previously-entered May 30, 2012, and November 26, 2013, Orders.

panels, specifically individuals and entities that purchased products containing LCD panels (e.g., cellular phones, computer monitors, televisions, and numerous other items). Additionally, various plaintiffs opted out of the two classes and brought cases of their own in front of Judge Illston.

Though many states elected to participate in the multidistrict litigation, the State of Illinois opted to pursue its own action. On August 10, 2010, the Illinois Attorney General (the "Attorney General" or the "State") filed the instant suit on behalf of Illinois indirect purchasers of products containing LCD panels.<sup>3</sup> The Complaint alleges that Defendants violated section 3(1) of the Illinois Antitrust Act (the "IAA") by conspiring to fix prices on LCD panels. The Complaint asserts claims for monetary relief (including treble damages) for damages suffered by the State of Illinois, its state agencies, and, in the State's *parens patriae* capacity, Illinois residents (both individuals and businesses) who purchased products containing LCD panels during the period of alleged price-fixing. Additionally, the Complaint seeks injunctive relief to undo the effects of Defendants' alleged unlawful conduct.

At issue in the instant motion is whether the Illinois Supreme Court Rules and the Illinois Rules of Evidence permit Defendants to present certain depositions of fact witnesses, taken primarily in connection with the multidistrict litigation, to be used as evidence depositions at trial in the case before this Court. This issue has been pending before the Court for over a year, having initially been raised in fall of 2014 in a motion by Defendants. MTP Ex. A. At a hearing on November 17, 2014, the Court instructed Defendants to specify precisely which depositions Defendants desired to use so that the State could raise any valid objections rather than addressing the depositions generally. Resp. Ex. 1. The matter was continued, and another hearing was held

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<sup>3</sup> Indirect purchasers include entities that sell products containing LCD panels and the consumers that ultimately buy the products.

on February 25, 2015. MTP Ex. F. Again, the Defendants were instructed to present specific deposition testimony for the State to either agree or raise objections to. MTP Ex. F; MTP at 4; Resp. at 3. The parties proceeded to engage in lengthy exchanges of documents, and discussions thereon, in an attempt to resolve the dispute. According to Defendants, the end result of such negotiations was that the State rejected all of their proposed deposition testimony. MTP at 5-6. The State insists it did agree that "the Defendants could use some of the designated testimony at trial" but still maintains that it such testimony would constitute hearsay. Resp. at 5. Defendants continue to assert that they are "not aware of any designated testimony for which the State has not asserted any objections." Reply at 12.

The parties being at an apparent impasse, Defendants filed the instant Renewed Motion, which has been fully briefed by both sides, and which this Court must now attempt to resolve. In their Renewed Motion, the Defendants request this Court make the following findings:

- (1) That Defendants are permitted to use all of the portions of depositions designated in Defendants' Exhibit H at trial pursuant to Illinois Supreme Court Rule 202 and Rule 212;
- (2) That "the fact that the State's counsel did not attend" the depositions presented in Exhibit H "will not prevent Defendants from offering the designated testimony in evidence" at trial pursuant to Illinois Rule of Evidence 804(b)(1); and
- (3) That the parties must "work cooperatively to reach agreement" with regard to other testimony from the multidistrict litigation being offered at trial. MTP at 3.

Defendants assert that these depositions taken in connection with the multidistrict litigation involved witnesses from many states and other countries, and that they were taken at great expense, pursuant to the Federal Rules of Civil Procedure and Federal Rules of Evidence which do not distinguish between fact witness depositions and evidence depositions as do their

Illinois counterparts. MTP at 1-3. Indeed, proceedings in this case were stayed pending discovery proceedings in the multidistrict litigation. MPT at 2. When proceedings in this case resumed, Defendants provided the State with copies of all depositions conducted in the multidistrict litigation, many of which Defendants believe the State intends to rely upon in the instant suit under certain hearsay exceptions, such as statements against interest. MTP at 2. Defendants also believe the State will utilize such depositions as the basis for expert testimony, thereby avoiding entry of the depositions themselves into the record. MTP at 20.

Defendants argue it would be prejudicial to the interests of justice to allow the State to selectively use the parts of the depositions that might be beneficial to its position without allowing Defendants the opportunity to use parts of the depositions as may be beneficial to their position. MPT 1-3. Recreating the same depositions as evidence depositions under the Illinois Rules will require inordinate time and expense, Defendants say, because the witnesses, many of whom are third-parties, reside mostly outside Illinois and in some cases outside the United States. MPT at 1.

The State insists that under Illinois Supreme Court Rule 202 a party must specify in the notice or subpoena for a deposition whether it is for discovery or evidence, and that where neither is specified the depositions are automatically considered discovery depositions only. Resp. at 6. The State argues that depositions taken pursuant to the federal rules are not acceptable as evidence depositions in Illinois and that no exception should be made here where the State had no notice of depositions in the multidistrict litigation. Resp. at 7-9. The State acknowledges that it is still possible to use the depositions at trial, but only for the limited purposes allowed under Illinois Rule of Evidence 804 in conjunction with Illinois Supreme Court Rule 212. Resp. at 10. The state argues that, within the confines of the exceptions allowed, it makes no difference



whether there was a predecessor-in-interest of the State present at any of the depositions because they can only be considered discovery depositions. Resp. at 10-11. Even if the Court were to consider them evidence depositions for purposes of Illinois law, the State further argues that no counsel representing consumers was present at some of the depositions at issue. Resp. at 10-11.

### Discussion

The Illinois Supreme Court Rules and the Illinois Rules of Evidence govern how depositions must be conducted and for what purposes they may be used. Illinois Supreme Court Rule 212 ("Rule 212") provides in pertinent part as follows:

(a) **Purposes for Which *Discovery* Depositions May Be Used.**

Discovery depositions taken under the provisions of this rule may be used only:

- (1) for the purpose of impeaching the testimony of the deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness;
- (2) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person;
- (3) if otherwise admissible as an exception to the hearsay rule;
- (4) for any purpose for which an affidavit may be used; or
- (5) upon reasonable notice to all parties, *as evidence at trial or hearing against a party who appeared at the deposition or was given proper notice thereof*, if the court finds that the deponent is not a controlled expert witness, the deponent's evidence deposition has not been taken, *and the deponent is unable to attend or testify because of death or infirmity*, and if the court, based on its sound discretion, further finds such evidence at trial or hearing will do substantial justice between or among the parties.

(b) **Use of Evidence Depositions.**

\*\*\*\*

All or any part of [non-physician and non-surgeon] evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that at the time of the trial:

- (1) The deponent is dead or unable to attend or testify because of age, sickness, infirmity, or imprisonment;
- (2) *The deponent is out of the county*, unless it appears that the absence was procured by the party offering the deposition, provided, that a party who is not a resident of this State may introduce his own deposition if he is absent from the county; or

(3) *The party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of trial, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.*

(c) Partial Use. If only a part of a deposition is read or used at the trial by a party, any other party may at that time read or use or require him to read any other part of the deposition which ought in fairness to be considered in connection with the part read or used.

Ill. S. Ct. Rule 212 (emphasis added). In addition, Illinois Supreme Court Rule 202 ("Rule 202") provides in pertinent part that "the notice, order, or stipulation to take a deposition shall specify whether the deposition is to be a discovery deposition or an evidence deposition," and that "in the absence of specification a deposition is a discovery deposition only." Ill. S. Ct. Rule 202.

The admissibility of evidence is a decision left to the sound discretion of the trial court. *Leonardi v. Loyola University of Chicago*, 168 Ill.2d 83, 92 (1995). One type of evidence that is allowed under only very limited circumstances is hearsay, which is defined as an out-of-court statement offered for the truth of the matter asserted. *Id.* at 99. The Illinois Rules of Evidence 804 ("Rule of Evidence 804") enumerates a number of exceptional circumstances in which hearsay, including both discovery and evidence depositions, are admissible in Illinois State Court when the declarant is unavailable as a witness. Ill. R. Evid. 804. Under Rule of Evidence 804, an evidence deposition may be used when declarant is unavailable if it is "taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or . . . a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." *Id.* A discovery deposition, on the other hand, is only admissible when declarant is unavailable if it was taken pursuant to subpart (a)(5) of Rule 212. *Id.* Even if a declarant is deceased, a discovery deposition which does not meet *all*

requirements of subpart (a)(5), or fall into one of the other hearsay exceptions in Rule 212, is not admissible. *Longstreet v. Cottrell, Inc.*, 374 Ill. App. 3d 549, 554 (5th Dist. 2007) (deceased declarant's discovery deposition not admissible under Rule 212(a)(5) where declarant was also a party).

Defendants argue that federal law, which these depositions were taken in accordance with, makes no distinction between a discovery deposition and an evidence deposition, and that in fact Illinois is the only state to do so. MTP at 7. Depositions taken pursuant to federal rules, Defendants say, are all taken with the expectation that the testimony can be used at trial. MTP at 7. Furthermore, depositions taken pursuant to federal rules "meet all the pertinent criteria for evidence depositions under Illinois law," MTP at 7. Defendants cite several cases they believe support their position, including *McClure v. Owens Corning Fiberglas Corporation*, 298 Ill. App. 3d 591, 4th Dist. 1998), *In re Estate of Ragen*, 96 Ill. App. 3d 1035 (1st Dist. 1981), *Flack v. McClure*, 206 Ill. App. 3d 976 (1st Dist. 1990), and *Berry v. American Standard, Inc.*, 382 Ill. App. 3d 895 (5th Dist. 2008).

None of the cases cited by Defendants actually supports their position; instead, case law cited by Defendants fails to reach the question of whether a deposition taken pursuant to federal rules could be deemed an evidence deposition under Illinois rules. In *McClure*, the Fourth District speculated that a deposition taken pursuant to federal rules should have been admitted in an asbestos exposure case, but found no reversible error where the information in question had largely been admitted by "other means." *Id.* at 603. That court made no finding as to any equivalency between federal rules and Illinois rules pertaining to depositions, instead noting that neither party had raised the issue. *Id.* at 602. In *Ragen*, the First District determined that a deposition labeled as a "discovery deposition" could be used as evidence where a trial judge

informed the parties ahead of time that the deposition could be considered as evidence at trial, the attorney stated at the beginning of the deposition that it was intended to be evidentiary, counsel for both parties was present at the deposition, and the content did not prejudice either party. *In re Estate of Ragen*, 96 Ill. App. 3d at 1046. In *Flack*, a trial court did not err in admitting a deposition where "proper notice was given and . . . the dual [discovery and evidentiary] purpose of the deposition was stated on the record, giving opposing counsel the opportunity to object." *Flack*, 206 Ill. App. 3d at 981. Finally, *Berry* does not support Defendants' argument because the Fifth District determined in that case that the trial court had properly disallowed the deposition, noting that "strict compliance with supreme court rules is generally required," and Rule 212 gives a trial court discretion to allow evidentiary use of discovery deposition *only* for a non-party in the limited circumstances prescribed by subpart (a)(5). *Berry*, 382 Ill. App. 3d at 902 (citing Ill. S. Ct. Rule 212).

Since case law cited by Defendants is not on point, the Court turns to the plain language of Rule 202, Rule 212, and Rule of Evidence 804. Defendants argue that, under those rules, the key issue with respect to whether a deposition is considered a discovery or evidence deposition under Illinois law is how the deposition was noticed; because the depositions in question were noticed pursuant to the federal rules – which Defendants say would allow for use at trial – Defendants believe this notice was adequate for the depositions to be considered evidentiary depositions under Illinois law. MTP at 8-9.

Defendants' argument glosses over another key fact, however: the depositions in question were taken in connection with an entirely different proceeding to which the State of Illinois was not a party. Even if the Court assumes, *arguendo*, that a deposition taken pursuant to federal rules puts all the parties on sufficient notice that such deposition may be used as evidence at trial

– thereby satisfying the Illinois rules regarding an evidence deposition – Defendants would then need to show, with respect to each deposition they seek to introduce, that the following requirements are met:

- (1) The witness is “unavailable” pursuant to Rule of Evidence 804(a);
- (2) The State (“the party against whom the testimony is now offered”), or “a predecessor in interest” of the State, had *both* an opportunity *and* “similar motive” to examine the witness at the deposition in question.

With respect to the first prong, it is not proper for the Court to make a determination on availability until the time of the trial. *People v. Ward*, 207 Ill. App. 3d 365, 370 (3d Dist. 1991) (“The availability of a witness is an ongoing question for the trial court at the time the evidence is presented to it”) (citing (*People v. Ford*, 139 Ill. App. 3d 894 (5th Dist. 1985))). Defendants have acknowledged this, and ask the Court to put aside determinations of availability accordingly, but to nevertheless answer whether, *if a witness is determined by the Court to be unavailable*, they are otherwise permitted to submit the depositions presented in Exhibit H at trial. MTP at 10.

On this question, Defendants first argue that the State had both adequate notice and opportunity to participate in depositions conducted in the multidistrict litigation based on the fact that counsel for the State filed appearances “very early on” in the multidistrict litigation, and as a result, received electronic case filings from that case, including the deposition protocol and Special Master’s Order regarding individual action plaintiffs and case management. MTP at 11-12. The Special Master’s Order indicated that deposition notices should be provided only to the liaison counsel for each group of plaintiffs. MTP at 12; MTP Ex. S. Because of this, say Defendants, the State was sufficiently aware that depositions were proceeding in the multidistrict

litigation and the State knew who to contact in the event they wanted to attend, thus satisfying the notice requirement. MTP at 12-13.

The State disputes Defendants' assertion that it had adequate notice of the depositions to satisfy Illinois rules. First of all, the State points out that notices of the depositions were not filed, so the fact that the State had entered an appearance in the multidistrict litigation did not result in their automatically receiving notice of depositions. Resp. at 9. The State acknowledges that it had access to the deposition protocol in the multidistrict litigation, but points out that this document lists no specific depositions, dates, or locations. Resp. at 9; MTP Ex. Q. The State further argues that the protective order in the multidistrict litigation prevented anyone who was not a party from accessing "confidential information" and that "virtually all of the deposition testimony and exhibits were designated confidential." Resp. at 9-10. Therefore, the State argues it could not have fully participated in the depositions even if it had notice. Resp. at 10.

The Defendants nevertheless maintain that the State had "de facto" notice, and further reply that notice to the State was not even necessary because "an evidence deposition need not be noticed as one intended to be used in a separate proceeding" and that "Rule 202 does not require that nonparties receive notice of an evidence deposition." Reply at 4. Rule of Evidence 804(b)(1) with its reference to a predecessor-in-interest would be rendered meaningless, Defendants argue, if the type of deposition contemplated therein were not allowed to be used in a separate proceeding by someone who was not party to the action in which the deposition was originally taken. Reply at 5.

Even assuming *arguendo* that Defendants are correct as to the legal aspect of this issue -- that *if the State had notice* that a deposition was being taken for the purpose of introducing as evidence at trial in another suit, then such deposition should thereafter be considered an evidence

deposition as between Defendants and the State in the instant suit – there is *nothing* that indicates the State had such notice with respect to the depositions at issue here. Defendants are inviting this Court to craft a definition of what constitutes notice that is inclusive of merely (1) having knowledge that some depositions are likely being conducted in a given case, and (2) having knowledge of who may be contacted for additional information, should any be available. The Court need not even entertain this invitation because Illinois Supreme Court Rule 206 (“Rule 206”) provides clear instructions as to what constitutes notice of a deposition. Ill. S. Ct. Rule 206.

Rule 206 states in pertinent part that “a part desiring to take the deposition of any person upon oral examination shall service notice in writing a reasonable time in advance on the other parties. *The notice shall state the time and place for taking the deposition; the name and address of each person to be examined, if known, or, if unknown, information sufficient to identify the deponent; and whether the deposition is for purposes of discovery or for use in evidence.*” Ill. S. Ct. Rule 206 (emphasis added). Nothing in the record or any of the parties’ allegations indicates that the State was provided with notice in advance of the time and place of any depositions, or the name and address or other information sufficient to identify any witnesses. It is true that federal rules, not Illinois rules, governed depositions taken in the multidistrict litigation; nevertheless, Illinois rules govern the instant suit and what is required of the parties thereto. Therefore, even if the Court were to accept Defendants’ legal argument that notice of a deposition being conducted in the multidistrict litigation pursuant to federal rules sufficiently indicated that the deposition might be used as evidence in Illinois, the Court finds no indication that such notice was ever provided to the State for any of the depositions at issue here.

Defendants next argue that, even if the State itself did not have an opportunity to cross-examine witnesses at the depositions, the depositions might still be used at trial under Rule of Evidence 804 because a "predecessor in interest" of the State had opportunity and "similar motive" to cross-examine the witnesses. MTP at 11. Defendants argue that the State's interests were adequately represented at the depositions by counsels for plaintiffs in the multidistrict litigation, including attorney generals from other states. MTP at 15-16.

The State argues that counsels for many of the plaintiffs in the multidistrict litigation were not predecessors in interest for the State because "the State has an interest in showing that the price-fixing overcharge was passed on from intermediaries to Illinois consumers." Resp. at 11-12. Furthermore, the State identifies at least one specific question – regarding the purported causal link between intermediary price increases and the alleged price-fixing of LCDs – the State would have asked, if given the opportunity, that none of the parties present at depositions with intermediary plaintiffs actually asked. Resp. at 12. Defendants reply that the State based its examples upon depositions that are not part of those contemplated by Defendants in Exhibit H, and that the State's proposed question has already been answered sufficiently in one of the depositions at issue. Neither party cites Illinois case law in support of their arguments as to what constitutes a "predecessor at interest" or a "similar motive" for purposes of Rule of Evidence 804.

This Court finds a relatively recent Illinois case called *Dukes v. Pneumo Abex Corporation* to be of guidance on this particular issue. 386 Ill. App. 3d 425 (4th Dist. 2008) (overruled on other grounds as stated in *Rodarmel v. Pneumo Abex, L.L.C.*, 2011 IL App (4th) 100463, ¶ 118). The Fourth District determined in *Dukes* that certain depositions taken in a federal conspiracy case regarding asbestos exposure could be used by a plaintiff in an Illinois



exposure liability case built upon the same underlying allegations. *Dukes*, 386 Ill. App. 3d at 442. A defendant manufacturer of products containing asbestos in *Dukes* called Honeywell appealed a trial court's decision to allow deposition testimony from cases where Honeywell was not a party. *Id.* at 427. The court explained the rule as follows:

Former testimony is not admissible unless it is established the witness is unavailable, the action involved the same issue between the same parties or their privies, and the party against whom the testimony is offered had full opportunity to cross-examine the witness in the prior proceedings. However, the identity-of-the-parties requirement may not be strictly enforced as long as the party against whom the evidence is offered had full opportunity to test the veracity of the former testimony through cross-examination, such as where testimony at a defendant's criminal trial is sought to be introduced at a civil trial against the same defendant.

Where the choice is between having testimony by way of deposition or prior trial testimony and having no testimony, this court has noted the identity-of-the-parties requirement should be relaxed further to allow the introduction of former testimony even if a party against whom the evidence is offered was not a party to the prior proceedings if 'the interests of the party against whom the deposition is sought to be admitted were protected by the presence of a party at the deposition with the opportunity and a similar motive to develop testimony.'

*Id.* at 441 (internal citations omitted).

The trial court in *Dukes* had reviewed each deposition at the time it was offered into evidence to determine if the interests of the defendant (the party against whom the prior testimony was offered) were protected. *Id.* In making its determination, the trial court had looked at the purpose for which the testimony was offered, and at the interests of the parties present when the deposition was taken. *Id.* at 441-42. The testimony at issue consisted of depositions of former employees of asbestos manufacturers in the federal conspiracy litigation who were either deceased or unavailable because they were not residents of Illinois. *Id.* at 441-43. The testimony was offered "for the purposes of showing parallel conduct by alleged coconspirators," such as whether they failed to inform employees of signs of asbestos-related disease detected by in-

house medical exams, but the testimony was not offered "for the purpose of proving conspiracy." *Id.* at 441-42. Defendant Honeywell had not been a party to the federal conspiracy case, but attorneys for a different asbestos manufacturer, who was a defendant in the federal case, were present at the depositions. *Id.* at 442. The appellate court found no abuse of discretion in the trial court's determination that attorneys for the asbestos manufacturer in the federal case would have had a similar motive to disprove the testimony of former employees that information was withheld from them. *Id.*

Applying the analysis of *Dukes* to the instant suit, in order to make any determination as to the admissibility of a deposition taken in prior cases, including the multidistrict litigation, this Court must first examine the purpose for which the testimony is being offered, and the interests of the parties present when the deposition was taken. Although the Court has reviewed the wide range of excerpts from deposition testimony presented by Defendants in Exhibit H, it remains unclear at this time for what purpose Defendants propose to introduce each portion. Indeed, it is unlikely Defendants could even predict with exactitude at this early stage – when no trial has even been set – what their strategic needs may be with respect to every proposed witness. It seems to this Court, however, that the gravamen of the deposition testimony at issue, to the extent that it can even be summarized, concerns how prices for products were set and what occurred at certain meetings where prices were allegedly fixed. MTP Ex. H; MTP Ex. W. These facts go directly to the elements of the price-fixing conspiracy the State seeks to prove, unlike the testimony in *Dukes* that was offered only to show parallel conduct by non-parties. Therefore this Court finds that admission of such deposition testimony would be improper *even if* the other criteria, such as unavailability of the witnesses, were met. With the many witnesses who testified at the multidistrict litigation depositions, and who had knowledge of the underlying facts

regarding meetings and communications between the Defendants, there is less than a miniscule chance that the Court would be left with “no testimony” whatsoever at trial. *See Duke*, 386 Ill. App. 3d at 441 (the identity-of-parties requirement is properly relaxed “where the choice is between having testimony by way of deposition or prior trial testimony and *having no testimony*” (emphasis added)).

Although the findings above are a sufficient basis to deny Defendants’ motion, and further analysis under *Dukes* need not be conducted, the Court will nevertheless fully address all of the parties’ arguments on this matter in the hope of subduing further redundancies in both parties’ motion practice on this issue. With respect to the second part of the *Dukes* analysis, Defendants have somewhat helpfully provided a list of counsels present at the depositions presented in Exhibit H. MTP Ex. W. Some of the parties represented include attorney generals for other states, and some include counsel for a class of Indirect Purchaser Plaintiffs, while others indicate only counsel for private intermediaries. MTP Ex. W. While these parties represent a variety of interests, many of which might overlap in some respects with that of the State, the Court finds that the interests of the parties who were present at all of the depositions at issue are distinguishable from the interests of the State here in *at least* two ways. First, plaintiffs who were intermediaries in the same alleged price-fixing at issue in the multidistrict litigation had no interest in eliciting testimony about overcharges being passed on from intermediaries to end-users. Second, none of the parties – not even attorney generals from other states – had an interest in eliciting testimony about overcharges being passed on to consumers in Illinois specifically. The Court thus fails to see how the interests of the State could have been adequately represented at any of the depositions from prior litigation, even assuming *arguendo* that such testimony meets the other requirements of Rule of Evidence 804.

Finally, Defendants have also argued that it would be inequitable to allow the State to cherry-pick which depositions they will use under hearsay exceptions available to them – such as statements against interest or statements of party opponents, or by allowing their experts to use otherwise inadmissible depositions to form the basis of their opinion testimony – while denying Defendants the opportunity to present those depositions that may be favorable to their case. This circumstance, however, exists in every case tried before any Court; to wit, a party is always permitted to put in testimony which is an admission by a party or a statement against interest. A party who has no such testimony cannot use the opponents' right to counter such testimony with rank hearsay. This case presents no different calculus and should be treated as any other case.

Defendants argue that requiring them to reconvene the depositions pursuant to Illinois law would “cause inordinate expense and delay” where most of the witnesses in question are third-party witnesses residing outside Illinois or even outside the United States. MTP at 18-19. Some witnesses, Defendants say, may not be available at all. MTP at 19. This argument also fails; there is no statute, rule, or case law supporting the premise that these impositions in and of themselves overcome the fundamental rules regarding hearsay that bind this Court. *See* Illinois Rules of Evidence, Article VIII, *et seq.* None of the exceptions enumerated in Rules 803 or 804 of the Illinois Rules of Evidence provide that expense and/or delay alone are sufficient reasons to allow hearsay into evidence. Defendants remain free to raise and advocate for introduction of additional material pursuant to the Rule of Completeness,<sup>4</sup> codified in Rule 212(c), regarding any portion of a deposition that might be introduced by the State at trial. Ill. Sup. Ct. Rule 212. To

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<sup>4</sup> Discovery depositions and a “broad range of evidence” may be introduced pursuant to the Rule of Completeness, as explained by the Fourth District in a recent medical malpractice suit:

Oral conversations, parts of written or recorded statements or in the nature of addenda thereto, and written or recorded statements neither part of the previously introduced written or recorded statement nor in the nature of addenda thereto may be introduced by an opposing party on his or her next examination of the same witness, whether cross or redirect, provided such evidence tends to explain, qualify, or otherwise shed light on the meaning of the evidence already received.

*Fakes v. Eloy*, 2014 IL App. (4th) 121100, ¶ 88.

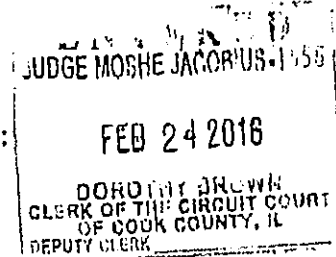
the extent that any expert witness for the State relies on depositions as the basis of their conclusions, so may any expert witness for Defendants rely on otherwise inadmissible depositions to form their own conclusions, and each party will have the opportunity to cross the others' experts on the strength of their reasoning. *See* Ill. Rule of Evidence 703. Other exceptions pursuant to which Defendants believe the State may introduce some of the deposition testimony at issue, such as statements against interest, remain available for both parties to invoke, consistent with the Rules of Evidence, as in every case before this Court. The possibility that one party in a given case may have more evidence than another party which falls into such an exception does not work an injustice. Thus the Court finds that no fundamental unfairness to Defendants will result from this Court's adherence to the requirements of Rule of Evidence 804 with respect to the deposition at issue here.

For the reasons explained *supra*, this Court cannot grant the broad declaration of admissibility sought by Defendants. The full relief requested by Defendants is overly broad to the point that this Court would utterly abdicate its duty to enforce the Illinois Rules of Evidence and Illinois Supreme Court Rules by granting the motion, even putting aside that determinations as to availability of witnesses at trial are premature.

IT IS, THEREFORE, HEREBY ORDERED that:

1. The Defendants' Renewed Motion to Permit the Use of MDL Fact Witness Depositions  
as Evidence Depositions is DENIED.

ENTERED:



February 24, 2016

Judge Moshe Jacobius

No. 1556

Exhibit C

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6 Fax: 415-512-4077  
7 Email: Hojoon.Hwang@mto.com

8 *Counsel for Defendants LG Electronics, Inc.*  
9 *and LG Electronics U.S.A., Inc.*

10 Additional Counsel Listed on Signature Pages

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 In re: CATHODE RAY TUBE (CRT)  
15 ANTITRUST LITIGATION

Case No. 07-5944 (SC)

MDL No. 1917

16 This Document Relates to:  
17  
18 ALL ACTIONS

**NOTICE OF DEPOSITION OF  
PLAINTIFF ALFRED H. SIEGEL, AS  
TRUSTEE OF THE CIRCUIT CITY  
STORES, INC. LIQUIDATING TRUST  
PURSUANT TO RULE 30(B)(6)**



1 PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil  
2 Procedure, Defendants LG Electronics, Inc. and LG Electronics U.S.A., Inc., through counsel and  
3 in conjunction with all defendants, will take the deposition upon oral examination under oath of  
4 the person or persons designated by Plaintiff Alfred H. Siegel, as Trustee of the Circuit City  
5 Stores, Inc. Liquidating Trust ("Plaintiff"), on April 23, 2014 beginning at 9:00a.m. EST, and  
6 continuing from day to day thereafter until concluded. The deposition shall be held at the law  
7 offices of Tavenner & Beran, PLC, 20 North Eighth Street Second Floor, Richmond, VA 23219  
8 before a notary public or other officer authorized to administer oaths. The testimony to be given  
9 will be recorded by stenographic and videographic means.

10 Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff is required to  
11 produce one or more witnesses at the stated location and time who are aware of and prepared to  
12 testify about Plaintiff's knowledge of the topics listed in the Schedule of Deposition Topics  
13 attached to this Notice as Exhibit A. If the designated representative or representatives do not have  
14 such knowledge, they are required to acquire it through whatever reasonable investigation may be  
15 necessary.

16 Dated: March 18, 2014

By: /s/ Laura K. Lin

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24 *Counsel for Defendants LG Electronics, Inc.*  
25 *and LG Electronics U.S.A., Inc.*

**EXHIBIT A**  
**DEFINITIONS**

1. "Any" shall be construed to mean "any and all."
2. "Circuit City" means Circuit City Stores, Inc.
3. "CRT" or "CRTs" means any (a) color picture tubes ("CPTs"), which are cathode ray tubes used primarily in color televisions, and (b) color display tubes ("CDTs"), which are used primarily in computer monitors.
4. "CRT Finished Product" or "CRT Finished Products" means televisions containing CPTs or computer monitors containing CDTs.
5. "Defendant" or "Defendants" means any of the entities currently or formerly named as defendants in this litigation and, without limitation, all of their past and present parents, subsidiaries, affiliates, joint ventures, officers, directors, employees, agents, attorneys, or representatives (and the parents', subsidiaries', affiliates', or joint ventures' past and present officers, directors, employees, agents, attorneys, or representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.
6. "Document" or "documents" has the broadest possible meaning pursuant to the Federal Rules of Civil Procedure including all writings and other tangible things upon which any form of communication is recorded or reproduced, and preliminary drafts and non-identical copies of the above (whether such copies differ from the original by reason of notation made on such copies or otherwise). Without limiting the generality of the foregoing, the term "document" or "documents" includes correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports or summaries of investigations, trade letters, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes or minutes of meetings or of other communications of any type, including inter- and intra-office communications, questionnaires, surveys, charts, graphs, photographs, phonograph recordings, films, tapes, disks, data cells, print-outs of information stored or maintained by electronic data processing or word processing equipment, including e-mail, and all other data compilations from which information can be obtained (by translation, if necessary, by you through detection devices into usable form), including electromagnetically sensitive storage media such as floppy disks, hard disks and magnetic tapes, and any preliminary versions, drafts or revisions of any of the foregoing.
7. "Or" and "and" should be construed so as to require the broadest possible response. If, for example, a request calls for information about "A or B" or "A and B," you should produce

NOTICE OF DEPOSITION OF PLAINTIFF ALFRED H. SIEGEL,  
AS TRUSTEE OF THE CIRCUIT CITY STORES, INC.  
LIQUIDATING TRUST PURSUANT TO RULE 30(B)(6)

1 all information about A and all the information about B, as well as all information about A and B  
2 collectively.

3 8. "Relating to," "referring to," "regarding," or "with respect to" mean, without  
4 limitation, the following concepts: discussing, describing, reflecting, dealing with, pertaining to,  
5 analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing,  
6 recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or  
7 in part.

8 9. "Relevant Period" means March 1, 1995, to November 25, 2007.

9 10. "You," or "Your" mean the responding Plaintiff, Circuit City Stores, Inc. and any  
10 other d/b/a's affiliated with Circuit City Stores, Inc., together with all present and former  
11 directors, officers, employees, or agents of the entities listed in this Definition.

#### 12 SCHEDULE OF DEPOSITION TOPICS

13 Witnesses with knowledge of the following matters during the Relevant Period:

14 1. Your overall corporate structure, including the identification of departments within  
15 Circuit City responsible for the purchase, sale, pricing, marketing, or distribution of CRTs or  
16 CRT Finished Products and their functions and the identification of any individuals that had  
17 managerial responsibility for the purchase, sale, pricing, marketing, or distribution of CRTs or  
18 CRT Finished Products.

19 2. The location of Circuit City's purchasing operations for CRTs or CRT Finished  
20 Products, including the location of price negotiations.

21 3. The identity and general description of the CRTs or CRT Finished Products You  
22 purchased, sold, marketed, or distributed.

23 4. The identity of the Defendants from whom you purchased CRTs or CRT Finished  
24 Products, and the identity and amount of CRTs or CRT Finished Products You purchased from them  
25 (by year, in units, and U.S. dollars), if any.

26 5. The identity of any non-Defendant manufacturers, producers, or distributors from  
27 whom you purchased CRTs or CRT Finished Products, and the identity and amount of CRTs or CRT  
28 Finished Products (by year, in units, and U.S. dollars) that You purchased from them, if any.

6. Circuit City's purchase or acquisition of CRTs or CRT Finished Products, including:

(a) purchase volume (by units and dollar value);

1 (b) the price quoted and paid for each purchase, including any discounts (*e.g.*,  
2 early-pay, volume, or deduction from invoice ("DFI") discounts), rebates (*e.g.*, guaranteed or  
3 unguaranteed volume, trailing credit, debit memoranda), and other terms of purchase;

4 (c) the date and quantity of each purchase;

5 (d) whether each purchase was for internal use or resale;

6 (e) whether each purchase was for a new product or a refurbished product;

7 (f) whether and when Circuit City took physical possession of the purchased  
8 CRTs or CRT Finished Products;

9 (g) the reasons for purchasing CRTs or CRT Finished Products in one state or  
10 country as opposed to another;

11 (h) the location of the person( s) who negotiated and consummated the purchase  
12 on Circuit City's behalf;

13 (i) the locations from which and to which each purchase was shipped;

14 (j) the locations from which and to which Circuit City was billed for each  
15 transaction;

16 (k) the name of each entity from which you acquired the CRTs or CRT  
17 Finished Products.

18 7. The factors Circuit City considered in determining (a) from which Defendant(s) or  
19 non-Defendant(s) to purchase CRTs or CRT Finished Products, and (b) which CRTs or CRT  
20 Finished Products to purchase from particular Defendants and non-Defendants, including but not  
21 limited to the vendor qualification process and new model reviews.

22 8. The process by which You negotiated, entered into, approved, or ratified purchase  
23 agreements or contracts for CRTs or CRT Finished Products, including: (a) Your policies and  
24 practices regarding the negotiation of terms and conditions of such sales contracts; (b) use of  
25 standardized sales or purchase contracts; (c) use of "MFN" (Most Favored Nation) or "MFC"  
26 (Most Favored Company) clauses or similar price-protection clauses; (d) the use of dealer  
27 agreements; and (e) the identity and location of documents that relate to the matters specified in  
28 this topic.

9. Your participation in any discounts, promotions, rebates, or advertising  
cooperative programs provided or sponsored by any Defendant or non-Defendant from whom  
You purchased CRTs or CRT Finished Products.

10. Circuit City's sales of CRTs or CRT Finished Products, whether direct sales or  
sales by any person or entity purchasing or incorporating such CRTs or CRT Finished Products

1 into other CRT Finished Products on Circuit City's behalf, including Circuit City's incorporation  
2 of CRTs in any other product or resale of CRTs or CRT Finished Products, including:

- 3 (a) the sales volume (by units and dollar value);
- 4 (b) the price quoted and received for each sale (including any discounts, rebates,  
5 and other terms of sale);
- 6 (c) the date and quantity of each sale; and
- 7 (d) the person(s) to whom such CRTs or CRT Finished Products were sold.

8 11. Your policies and practices for setting the price at which You sold CRT Finished  
9 Products to Your customers, including consideration or use of the following:

- 10 (a) formulas;
- 11 (b) factors such as cost, supply, demand, competitor pricing, market forecasts, and  
12 product specifications;
- 13 (c) price guidelines or price lists;
- 14 (d) negotiations or negotiated prices;
- 15 (e) commission costs;
- 16 (f) average costs;
- 17 (g) why pay prices;
- 18 (h) minimum advertised prices;
- 19 (i) meet-comping;
- 20 (j) alternative distribution channels;
- 21 (k) the percentage of price attributable to CRTs contained in CRT Finished  
22 Products sold;
- 23 (l) rebates;
- 24 (m) below-cost pricing;
- 25 (n) bundled product or services pricing;
- 26 (o) most-favored-nation pricing;
- 27 (p) sale pricing;
- 28 (q) market development funds or demo budgets;
- (r) advertising funds;
- (s) non-price consideration;
- (t) loss-leader pricing;
- (u) early-pay discounts;
- (v) "min sell prices";
- (w) "closest thing to wholesale" prices;

1 (x) builder prices;  
2 (y) spiffs or spivs; and  
3 (z) if and how these policies, procedures, practices, methods, formulas, or  
4 factors vary by buyer.

5 12. Your use of discounts, promotions, rebates or loyalty programs in connection with  
6 the sale of CRT Finished Products to Your customers, including how You recorded such  
7 discounts or rebates, and the identity and location of documents or data recording such discounts  
8 or rebates.

9 13. Other products that You believed were viewed by Your customers as alternatives  
10 to CRT Finished Products, including: (a) products other than CRT Finished Products; (b) the  
11 reasons that You believe Your customers viewed such products to be alternatives to the CRT  
12 Finished Products You purchased from the Defendants; (c) the extent to which these products had  
13 any effect on Your pricing decisions; and (d) the identity and location of documents that relate to  
14 the matters specified in this topic.

15 14. Your policies and practices relating to Your decision to give priority to the  
16 promotion, advertising, or sale of certain Defendants' CRT Finished Products over other  
17 Defendants' CRT Finished Products, to promote Defendants' CRT Finished Products over non-  
18 Defendants' CRT Finished Products, or to promote non-Defendants' CRT Finished Products over  
19 Defendants' CRT Finished Products.

20 15. All contracts or any other agreements relating to CRTs or CRT Finished Products  
21 between Circuit City and any entity, including the terms and conditions of any such contracts or  
22 agreements, including the scope of the agreement, choice of law, and forum selection.

23 16. Explanation of whether, based on records maintained by Circuit City, it is possible  
24 to link, trace, or otherwise establish a relationship between the CRTs or CRT Finished Products  
25 that Circuit City purchased to those that it sold and, if so, how.

26 17. Whether the CRTs contained in each of the CRT Finished Products on which  
27 Circuit City bases its claims were first shipped-to or billed-to a location outside the United States  
28 or inside the United States, and an explanation of how Circuit City made or would make that  
determination.

18. The identity of the manufacturer of the CRT contained in each of the CRT  
Finished Products on which Circuit City bases its claims, and an explanation of how Circuit City  
has made or would make that identification.

1           19. Whether You engaged in market monitoring activity for CRT Finished Products  
2 and, if so, your practices, policies, and procedures concerning Your market monitoring activity  
3 for CRT Finished Products including the following: (a) Your competitive intelligence activities;  
4 (b) Your use of third-party data sources and market share/data analyses; and (c) Your knowledge,  
5 use, and tracking of Your competitors pricing for CRT Finished Products, including the shop-out  
6 database.

7           20. Circuit City's suspicions or beliefs that any manufacturer of CRTs was engaged in  
8 any anticompetitive conduct relating to CRTs and the circumstances (including dates)  
9 surrounding, and reasons for and sources of, such suspicions or beliefs, and any formal or  
10 informal investigations conducted by Circuit City to confirm or deny such suspicions or beliefs.

11           21. The identification, description, date, location, source, and persons involved in all  
12 statements that Circuit City read, heard, or otherwise became aware of upon which Circuit City  
13 bases its contention that Defendants fraudulently concealed the alleged conspiracy from Circuit  
14 City, including a description of Circuit City's reliance on any such statements.

15           22. The method(s) used by You to track inventory levels, link returns and sales, and  
16 monitor product margins of CRT Finished Products that You sold, including any predecessor or  
17 successor systems.

18           23. Your standards and practices with regard to tracking the purchases and sales of  
19 CRT Finished Products for determining the profitability of sales, and for financial reporting  
20 purposes, including the nature of the financial data available, the location of such data, and the  
21 names of individuals responsible for maintaining such data.

22           24. The identity of each of Your electronic databases related to the purchases and sales  
23 listed in Topics 6 or 11 above, and the contents of each such database, including the fields or  
24 column headings used in such electronic databases.

25           25. The extent to which Circuit City passed on its costs in purchasing or acquiring  
26 CRTs or CRT Finished Products to its customers.

27           26. The assignment of any claims asserted in the Complaint, including the  
28 identification of the assignees, the identification of the assignors, the mechanism or form of said  
assignments, the consideration received for any such assignment, and any agreements or plans for  
the distribution of damages or settlement proceeds recovered in this action to the assignors.

          27. Your policies and practices related to the retention and deletion of all documents  
and data (including any of Your electronic databases, e-mail system, and any predecessor or  
successor systems) related to the purchases and sales listed in Topics 6 or 11.

1           28.     Circuit City's search for, production of, and all efforts to preserve any documents  
2     that are potentially relevant to this or any other litigation or investigation concerning CRTs or  
3     CRT Finished Products.

4           29.     Identification, location, last known address, telephone number, and e-mail address  
5     of any person having or believed to have any information regarding the foregoing topics or facts  
6     underlying these topics.

7           30.     Identification, location, last known address, telephone number, and e-mail address  
8     of any person having or believed to have any documents or other electronic or non-electronic  
9     files regarding the foregoing topics or facts underlying these topics, including any person having  
10    or believed to have information regarding each of the fields contained in such files and the means  
11    by which those fields were constructed.

12          31.     A complete explanation of Your transactional sales and purchase data for CRTs or  
13    CRT Finished Products, including any transactional-level sales data produced by You in this  
14    action and the information contained in such data.



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10 Additional Counsel Listed on Signature Pages

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 In Re CATHODE RAY TUBE (CRT)  
16 ANTITRUST LITIGATION

No.: 07-cv-5944 SC—MDL NO. 1917

CERTIFICATE OF SERVICE

17 This Document Relates to:

18 ALL ACTIONS  
19  
20  
21  
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28

**CERTIFICATE OF SERVICE**

I declare that I am employed with the law firm of Munger, Tolles & Olson LLP, 560 Mission Street, Twenty-Seventh Floor, San Francisco, California 94105. I am not a party to the within cause, and I am over the age of eighteen years. I further declare that on March 18, 2014, I served a copy of:

**NOTICE OF DEPOSITION OF PLAINTIFF ALFRED H. SIEGEL, AS TRUSTEE OF THE CIRCUIT CITY STORES, INC. LIQUIDATING TRUST PURSUANT TO RULE 30(B)(6)**

☒ **BY ELECTRONIC MAIL** by sending a true copy thereof to the addressees, as stated below.

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Executed on March 18, 2014 at San Francisco, California. I declare under penalty  
of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Laura K. Lin

Laura K. Lin

## Exhibit D

Page 1

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Case Number 07-5944 (SC)

MDL No. 1917

----- x

In Re: CATHODE RAY TUBE (CRT)  
ANTITRUST LITIGATION

This Document Relates to  
ALL ACTIONS

----- x

VIDEO DEPOSITION OF STEVEN DEASON

Richmond, Virginia

Wednesday, April 23, 2014

SSS 10:58 a.m.

\* \* \* \* \*

*Certifications Made  
06/03/2014*

*RLW*

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516-608-2400

Page 2

1  
2 \*\*\*\*\*  
3 Stephen  
4 Whereupon, this is the video deposition  
5 of ~~STEPHEN~~ DEASON, who appeared as a witness  
6 called and examined by the Defendant on Wednesday,  
7 April 23, 2014, conducted at the law offices of  
8 Tavenner & Beran, PLC, 20 North 8th Street, Richmond,  
9 Virginia commencing at 10:58 a.m. and was reported  
10 and transcribed by T. S. Hubbard, Jr.. The witness  
11 was sworn in by the videographer Gordon Croll,  
12 a Notary for the Commonwealth of Virginia.  
13  
14 \*\*\*\*\*  
15  
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Page 3

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2 (Pages 2 - 5)

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Page 7

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13 \*\*\*\*\*  
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\*\*\*\*\*  
25

Page 9

1 PROCEEDINGS  
2 (Before going on video and steno record.)  
3 THE REPORTER: Before going on the  
4 video, and steno record, it was stipulated by  
5 all counsel that counsel did not have to  
6 repeat their appearances, that the same  
7 appearances for the Brandy Pose deposition  
8 would apply in this deposition of Steven  
9 Deason.  
10 (On the video and steno record.)  
11 THE VIDEOGRAPHER: Good morning still. 10:58:31  
12 We are on the record. The time is 10:58:33  
13 approximately 10:58 a.m., and today's date is 10:58:36  
14 April 23. The year is 2014. 10:58:41  
15 This is the video1 deposition of Steven 10:58:43  
16 Deason. 10:58:46  
17 My name is Gordon Croll. The court 10:58:47  
18 reporter here today is Steve Hubbard. 10:58:49  
19 We are here from Veritext National 10:58:52  
20 Deposition Litigation Services and this 10:58:55  
21 deposition is being held at 20 North 8th 10:58:57  
22 Street, Richmond, VA. 10:59:01  
23 The case is "In Re CRT" and would the 10:59:03  
24 deponent please raise their right hand. 10:59:09  
25 (Whereupon, STEVEN DEASON is sworn.) 10:59:12

3 (Pages 6 - 9)

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Page 10

1 THE VIDEOGRAPHER: Counsel have already 10:59:16  
2 identified themselves, and you may go 10:59:18  
3 forward. 10:59:21  
4 MR. LAHAD: Just for the record, this is 10:59:24  
5 John Lahad from Susman Godfrey for the 10:59:24  
6 witness and the Trust now defending the 10:59:24  
7 witness. 10:59:27  
8 EXAMINATION BY MS. LIN: 10:59:29  
9 Q Good morning, Mr. Deason. 10:59:29  
10 A Good morning. 10:59:30  
11 Q Thank you for being here today. Have 10:59:31  
12 you ever been deposed before? 10:59:33  
13 A Yes. 10:59:35  
14 Q In what cases have you been deposed? 10:59:35  
15 A I was deposed for our LCD case for 10:59:38  
16 Circuit City Trust. 10:59:42  
17 Q Did you serve as the 30(b)(6) witness in 10:59:43  
18 that case? 10:59:45  
19 A Yes, I did. 10:59:45  
20 Q You understand that you will be serving 10:59:46  
21 as the 30(b)(6) witness in today's deposition? 10:59:47  
22 A Yes. 10:59:50  
23 Q I think you heard me go over these this 10:59:50  
24 morning, so I will be brief, but I have a couple 10:59:53  
25 of ground rules that I want to cover with you. 10:59:54

Page 11

1 Let's try not to talk over one another 10:59:56  
2 so that our court reporter can get a clear record. 10:59:57  
3 Does that make sense? 11:00:00  
4 A Yes. 11:00:01  
5 Q I will ask you to make a verbal answer 11:00:01  
6 instead of just nodding your head, does that make 11:00:04  
7 sense? 11:00:06  
8 A Yes. 11:00:06  
9 Q If you want to break at any time please 11:00:07  
10 just let me know, I would ask that you finish if I 11:00:08  
11 have a question pending and then I am happy to 11:00:12  
12 take a break. 11:00:13  
13 Does that make sense? 11:00:14  
14 A Yes, it does. 11:00:15  
15 Q I am going to hand you a document 11:00:16  
16 previously marked as Exhibit 2831. Have you seen 11:00:18  
17 this exhibit before? 11:00:28  
18 A Yes. 11:00:28  
19 Q Do you understand this is the of today's 11:00:32  
20 deposition? 11:00:34  
21 A Yes. 11:00:34  
22 Q I understand you will be discussing 11:00:38  
23 topics 1 through 3, Topic 6 as to subparts G and 11:00:41  
24 H, 7 through 9, 11, 13, 14, 19 through 21 and 25. 11:00:46  
25 Is that correct? 11:00:53

Page 12

1 A That is my understanding. 11:00:54  
2 MR. LAHAD: I think you omitted part 12. 11:00:56  
3 MS. LIN: And a part of 12. 11:01:00  
4 MR. LAHAD: Yes, the first part of 12. 11:01:02  
5 SKUs, discounts, promotions, rebates programs 11:01:03  
6 in connection with the sale of CRT finished 11:01:06  
7 products to your customers. 11:01:08  
8 MS. LIN: Thank you. 11:01:10  
9 BY MS. LIN: 11:01:11  
10 Q Mr. Deason, what did you do to prepare 11:01:12  
11 for today's deposition? 11:01:15  
12 A I reviewed my testimony in the LCD case 11:01:16  
13 and I met with counsel yesterday. 11:01:20  
14 Q Did you review any documents other than 11:01:22  
15 the transcript of that LCD deposition? 11:01:24  
16 A This document here that I brought with 11:01:27  
17 me about my own personal employment history with 11:01:29  
18 Circuit City. 11:01:34  
19 (Whereupon, Deposition Exhibit 2834 is marked for 11:01:34  
20 Identification.) 11:01:34  
21 MS. LIN: Why don't we go ahead and mark 11:01:37  
22 the document you brought with you as Exhibit 11:01:39  
23 2834 and use this version and then trade with 11:01:43  
24 you, if that's okay. 11:01:47  
25 THE WITNESS: That is fine. 11:01:48

Page 13

1 BY MS. LIN: 11:01:48  
2 Q Thank you. You prepared Exhibit 2834 11:01:48  
3 just to help remember which positions you held at 11:01:51  
4 Circuit City? 11:01:54  
5 A Yes. 11:01:54  
6 Q Did you bring any other documents with 11:01:55  
7 you today to use at this deposition? 11:01:58  
8 A No. 11:02:00  
9 Q Did you talk to anyone other than your 11:02:01  
10 attorneys to help prepare for today's deposition? 11:02:02  
11 A No. 11:02:05  
12 Q Have you ever been employed by the 11:02:10  
13 Circuit City Liquidating Trust? 11:02:12  
14 A Yes. 11:02:16  
15 Q When were you employed by the Liquidated 11:02:18  
16 Trust? 11:02:19  
17 A I have a consulting company, so I did it 11:02:20  
18 as an independent contractor, but I did so as part 11:02:24  
19 of the LCD case in answering interrogatories and 11:02:28  
20 being the witness as I am again today. 11:02:34  
21 Q You are appearing today as the 11:02:39  
22 subcontract employee of Circuit City Trust? 11:02:43  
23 A As an independent contractor, yes. 11:02:47  
24 Q Do you have any employer right now other 11:02:52  
25 than your consulting company? 11:03:02

4 (Pages 10 - 13)



Page 14

1 A No. 11:03:05  
2 Q What is your consulting company called? 11:03:07  
3 A Deason Consulting, Incorporated. 11:03:09  
4 Q Does Deason Consulting, Incorporated 11:03:13  
5 provide services to any entities other than the 11:03:17  
6 Circuit City Liquidating Trust? 11:03:20  
7 A Yes. 11:03:21  
8 Q Have you provided services to any of the 11:03:22  
9 parties in this litigation other than Circuit 11:03:25  
10 City? 11:03:28  
11 A I don't know if JVC is a party to this, 11:03:28  
12 but I have done some work in the last five years 11:03:32  
13 for JVC. 11:03:35  
14 Q Is your previous employment with Circuit 11:03:43  
15 City Stores reflected in Exhibit 2834? 11:03:46  
16 A Yes, it is. 11:03:49  
17 Q In any of the positions reflected in 11:03:50  
18 2834, did you have responsibility related to CRT 11:03:55  
19 finished products? 11:04:01  
20 A Yes. 11:04:01  
21 Q When I refer to CRT finished products, 11:04:04  
22 do you understand that to mean products that 11:04:07  
23 containing CRTs? 11:04:08  
24 A Yes. 11:04:11  
25 Q Which of the positions reflected on 11:04:11

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1 Exhibit 2834 did you have responsibility for CRT 11:04:14  
2 finished products? 11:04:18  
3 A In 1992 to 1995, I was southern division 11:04:20  
4 product manager for ACE in SOHO, and SOHO stands 11:04:25  
5 for small office home office and in that capacity 11:04:27  
6 I was involved with computer monitors. 11:04:35  
7 Also as corporate category manager, 11:04:48  
8 senior category management video, from 1996 to 11:04:54  
9 1998, I would have been involved with what we call 11:04:58  
10 combination products which are products that have 11:05:05  
11 both a CRT and a DVD or a VCR built into them, and 11:05:08  
12 I was also during the period of 1998 to July 2002, 11:05:15  
13 a national buyer for camcorders and VCRs, for 11:05:21  
14 approximately two years of that period. I also 11:05:25  
15 had responsibilities that included those same type 11:05:29  
16 of combo products. 11:05:31  
17 Q Going on your position from 1992 to 11:05:42  
18 1995, what did your responsibilities, related to 11:05:45  
19 computer monitors, include? 11:05:49  
20 A I would be responsible for a division of 11:05:52  
21 the company, the southern division. It's a group 11:05:56  
22 of stores in the Southeast based out of Atlanta, 11:05:58  
23 Georgia, and four of those stores I would choose 11:06:02  
24 which stores would get which product and I would 11:06:05  
25 choose what products were in the ads for those 11:06:10

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1 markets for the southern division markets. 11:06:16  
2 I would also set the commissions for 11:06:19  
3 those products and also functionally set the 11:06:26  
4 price. All of this was at the buyer's key 11:06:35  
5 direction. It was called store merchandising. We 11:06:39  
6 had merchants. I had no buying responsibilities. 11:06:44  
7 Q Focusing on your role from 1996 to 1998 11:06:55  
8 when you were a corporate category manager, what 11:06:58  
9 did your responsibilities related to CRT finished 11:07:01  
10 products include in that role? 11:07:04  
11 A Similar responsibilities. In this case, 11:07:06  
12 I changed product categories, so I had video 11:07:11  
13 product that included camcorders, VCRs, a 11:07:19  
14 combination product, and did the same sort of 11:07:24  
15 duties that I had done for the southern division, 11:07:28  
16 I now did for the entire country and because we 11:07:30  
17 were both physically located in Richmond, 11:07:34  
18 Virginia, I had worked much more closely with the 11:07:38  
19 buyer. 11:07:41  
20 Although I had no buying responsibility 11:07:41  
21 during that period of time, I did sit in on quite 11:07:46  
22 a few buyer vendor discussions including 11:07:50  
23 negotiations. 11:07:55  
24 Q Did your responsibilities change between 11:07:57  
25 your corporate category manager role and your 11:08:00

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1 following role as a national buyer? 11:08:02  
2 A Correct. Once I became the national 11:08:04  
3 buyer, then I am the lead in actually negotiating 11:08:08  
4 the purchases and managing the product so that 11:08:12  
5 others would do the role that I used to do, but my 11:08:17  
6 role would include the actual purchase. 11:08:23  
7 Q And your role related to the actual 11:08:27  
8 purchase that included purchasing the combination 11:08:30  
9 products we discussed previously? 11:08:34  
10 A Yes, not for the entire period of 1998 11:08:34  
11 to 2002, but approximately the first couple of 11:08:38  
12 years. We had an assistant buyer come on during 11:08:41  
13 that period. I cannot speak to the exact date who 11:08:44  
14 took it over. 11:08:48  
15 Q At any other point in time, did you have 11:08:49  
16 responsibility related to buying CRT finished 11:08:51  
17 products? 11:08:54  
18 A No. 11:08:54  
19 MR. GRALEWSKI: Objection, form. 11:08:56  
20 BY MS. LIN: 11:09:16  
21 Q When I refer to Circuit City, I will be 11:09:16  
22 referring to Circuit City Stores, Inc., do you 11:09:18  
23 understand? 11:09:21  
24 A Yes. 11:09:21  
25 Q From describing your roles at Circuit 11:09:22

5 (Pages 14 - 17)

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1 City, it sounds like Circuit City was divided into 11:09:26  
2 regional divisions, is that right? 11:09:30  
3 A It was until 1995, so from the period of 11:09:31  
4 time that we are talking about today it was not. 11:09:34  
5 Q Was Circuit City divided into any other 11:09:39  
6 types of divisions until after 1995? 11:09:42  
7 A Operations continued to have divisions, 11:09:46  
8 but merchandising did not. 11:09:50  
9 Q Were CRT finished products sales 11:09:58  
10 purchased on a national level after 1995? 11:10:03  
11 MR. LAHAD: Objection, form. 11:10:07  
12 BY MS. LIN: 11:10:07  
13 Q You can answer unless he instructs you 11:10:12  
14 not to. 11:10:15  
15 A Yes, they were purchased on a national 11:10:16  
16 level and they were also purchased on a national 11:10:18  
17 level before 1995. I had no buying 11:10:20  
18 responsibilities when I was in a divisional role. 11:10:24  
19 Q Were there positions equivalent to a 11:10:30  
20 division product manager's role that you held in 11:10:38  
21 1992 through 1995 after 1995? 11:10:40  
22 A No. 11:10:46  
23 Q Which positions took over the 11:10:50  
24 responsibilities that you had in that southern 11:10:55  
25 division product manager role? 11:10:58

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1 A Originally, these roles were taken over 11:11:00  
2 by the ~~not~~ two positions that I list which is 11:11:07  
3 corporate market manager and corporate category 11:11:10  
4 manager, and when I became a buyer those positions 11:11:13  
5 in 1998, those positions no longer existed and the 11:11:18  
6 buyer handled both the responsibilities that these 11:11:22  
7 positions had handled before and the 11:11:28  
8 responsibilities that the buyers had held before. 11:11:31  
9 Q Do I understand correctly that in 1998, 11:11:41  
10 Circuit City consolidated the category manager and 11:11:45  
11 buyer roles into one role? 11:11:48  
12 A Yes. 11:11:49  
13 Q Were there national buyers with 11:11:57  
14 responsibility for CRT finished products other 11:12:01  
15 than you? 11:12:03  
16 A Yes. 11:12:05  
17 Q How many positions were there related to 11:12:06  
18 CRT finished products at the national buyer level? 11:12:10  
19 A I do not know. 11:12:16  
20 Q Do you know who acted as a national 11:12:25  
21 buyer for CRT finished products at any point in 11:12:28  
22 time other than yourself? 11:12:31  
23 A I know of one, but it's a long period 11:12:33  
24 of time. I believe we provided org charts which 11:12:36  
25 are probably a lot more accurate than my memory, 11:12:43

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1 but I do know some specific people who fall along 11:12:47  
2 the way. 11:12:51  
3 I am not just sure that I could rattle 11:12:53  
4 off everybody there were, but quite a few people 11:12:54  
5 involved over that period of time. 11:12:56  
6 Q Quite a few people involved as national 11:12:58  
7 buyers during that time? 11:12:59  
8 A Yes. 11:13:02  
9 Q Will you tell me the names of those 11:13:02  
10 buyers just to the extent that you remember them? 11:13:03  
11 A Also I have to caution that I know that 11:13:08  
12 they bought on the TV Team, whether they 11:13:11  
13 specifically bought CRT, I may be in error. 11:13:15  
14 Rick Souder who was a buyer for the TV 11:13:18  
15 Team during this period, and also a division 11:13:22  
16 merchandise manager, which is like supervisors 11:13:26  
17 buyers, so he would have been involved. 11:13:28  
18 Andy Schuler -- I will not try that 11:13:38  
19 one -- was also involved, Danny Cagwin, Doug 11:13:42  
20 Moore, I believe, was involved at the very end of 11:13:46  
21 this period. Tom Croll. Igor Anshakov. I will 11:13:52  
22 stop at that point. 11:14:15  
23 Q Thank you. Did you collaborate with any 11:14:17  
24 of the employees you just listed in determining 11:14:21  
25 the CRT finished product purchases? 11:14:25

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1 MR. LAHAD: Objection, form. 11:14:30  
2 THE WITNESS: I don't know what you mean 11:14:31  
3 by collaborate. 11:14:33  
4 BY MS. LIN: 11:14:33  
5 Q Did you have any shared responsibilities 11:14:34  
6 with any of the employees you just listed that 11:14:36  
7 were related to CRT finished products? 11:14:37  
8 A We shared time together. We visited 11:14:45  
9 suppliers together. We did not have shared 11:14:50  
10 responsibilities if I understand the question 11:14:53  
11 correctly. 11:14:55  
12 Q Do you know how many stores Circuit City 11:15:03  
13 had during the relevant time period and we can go 11:15:05  
14 by year if that is a more reasonable way to do it. 11:15:08  
15 A I am not going to get that accurate, but 11:15:10  
16 you're talking about a period of time that we were 11:15:12  
17 probably below 400 and at our peak somewhere 11:15:17  
18 around 650 to 660. 11:15:22  
19 Q Do you know during the relevant period 11:15:29  
20 what percentage of those stores were located in 11:15:31  
21 California? 11:15:34  
22 A No. 11:15:35  
23 Q Would there be a way to find that out? 11:15:36  
24 A You could if you looked at the reports 11:15:40  
25 and counted all the stores and then counted it 11:15:44

6 (Pages 18 - 21)

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1 out, but as far as doing it quickly, no. 11:15:47  
2 Q Do you know the percentage of Circuit 11:15:53  
3 City Stores during the relevant period that were 11:15:55  
4 located in Illinois? 11:15:57  
5 A No. 11:15:58  
6 MR. LAHAD: A real quick one. One of 11:16:00  
7 the things that we have not done yet on this 11:16:01  
8 record as we did in the previous deposition 11:16:04  
9 is to define relevant time period, so we are 11:16:04  
10 still talking about March 1995 to November 11:16:06  
11 2006? 11:16:09  
12 MS. LIN: Thank you, yes. Does that 11:16:09  
13 make sense? 11:16:11  
14 THE WITNESS: Yes. 11:16:11  
15 MS. LIN: Great. 11:16:12  
16 MR. LAHAD: Sorry, did I say six? 11:16:14  
17 MR. ROSS: You did. 11:16:15  
18 MS. LIN: I am sorry, so we're about 11:16:15  
19 March 1995 through November 2007 as the 11:16:15  
20 relevant period. 11:16:20  
21 MR. LAHAD: Okay. 11:16:21  
22 MS. LIN: Does that make sense? 11:16:21  
23 THE WITNESS: Yes. 11:16:23  
24 MS. LIN: Great. 11:16:24  
25 BY MS. LIN: 11:16:25

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1 Q Did Circuit City have any stores named 11:16:25  
2 something other than Circuit City during the 11:16:27  
3 relevant time period? 11:16:29  
4 A We had stores, yes. We had stores in 11:16:34  
5 Canada that would not be part of the records that 11:16:41  
6 we have been talking about. 11:16:44  
7 We previously had stores called Circuit 11:16:47  
8 City Express, but I believe they were all closed 11:16:49  
9 before this time period. 11:16:54  
10 Q Did your responsibilities in any of your 11:17:00  
11 positions for Circuit City relate to products 11:17:03  
12 eventually sold in Canada? 11:17:07  
13 A No. 11:17:08  
14 Q Do you know if any of the employees you 11:17:10  
15 listed who had responsibility related to CRT 11:17:12  
16 finished product purchases had responsibilities 11:17:15  
17 related to CRT finished product sales in Canada? 11:17:18  
18 A They did not. 11:17:26  
19 Q Which divisions of Circuit City had 11:17:38  
20 responsibilities related to the purchase of CRT 11:17:41  
21 finished products during the relevant period? 11:17:44  
22 A The merchandising department would be 11:17:46  
23 responsible. It is not a division, but is a 11:17:50  
24 department that was responsible for purchase of 11:17:53  
25 all Circuit City products for resale. 11:17:56

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1 Q Was there a particular subdivision 11:18:06  
2 within the merchandising department that had 11:18:08  
3 responsibility for CRT finished product purchases? 11:18:11  
4 A I'm not sure what you would call them. 11:18:15  
5 We had groups that were broken out managed by 11:18:24  
6 different groups, so you would have a general 11:18:29  
7 manager who would manage a group of products. 11:18:30  
8 Most of the period we are talking about, 11:18:34  
9 there would have been a video department where you 11:18:37  
10 had a general manager who was over the video 11:18:40  
11 product. 11:18:45  
12 It was later called Display and at some 11:18:46  
13 points it might have also had audio product in it. 11:18:50  
14 We also had a division merchandise 11:18:55  
15 manager, so you had a vice president of 11:19:01  
16 merchandising, you had a general manager that 11:19:01  
17 broke these groups in, and then you had a 11:19:06  
18 divisional merchandise manager who would have 11:19:07  
19 having separate groups. 11:19:09  
20 For example, in this case, since we're 11:19:11  
21 talking about CRT, the display was one DMM, and 11:19:12  
22 all video product that was not display was the 11:19:18  
23 other DMM, and that was the DMM that I worked for 11:19:22  
24 which had the combo product and other products 11:19:27  
25 that are not CRT product. 11:19:30

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1 Q Do you know which of those two groups 11:19:33  
2 you were just talking about would have 11:19:36  
3 responsibility related to CRT finished products 11:19:38  
4 that were monitors? 11:19:40  
5 A I am sorry. I left that group out. 11:19:42  
6 That would have been a separate group that we 11:19:45  
7 called the SOHO group and that group was all small 11:19:47  
8 office home office would include everything that 11:19:53  
9 had to do with computers and usually some other 11:19:57  
10 category, but predominantly computers. 11:20:02  
11 Q Was that SOHO group located in one 11:20:05  
12 location? 11:20:09  
13 A Yes. 11:20:09  
14 Q Where was that location? 11:20:10  
15 A Richmond. 11:20:12  
16 Q Is that true throughout the relevant 11:20:13  
17 period? 11:20:15  
18 A Yes. 11:20:15  
19 Q For the display group that had 11:20:16  
20 responsibilities related to CRT finished products 11:20:20  
21 other than monitors, was that group concentrated 11:20:23  
22 in one location? 11:20:27  
23 A Yes. 11:20:28  
24 Q Where was that location? 11:20:29  
25 A Richmond. 11:20:30

7 (Pages 22 - 25)

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1 Q Was that true throughout the relevant 11:20:31  
2 period? 11:20:33  
3 A Yes. 11:20:33  
4 Q Was there a position at Circuit City 11:20:34  
5 that had responsibility related to the deciding of 11:20:43  
6 which brands of CRT finished products to purchase? 11:20:46  
7 A The buyer chooses which products to buy. 11:20:50  
8 Q Were Circuit City's buyers concentrated 11:20:57  
9 in any one location? 11:21:00  
10 A They were all in the headquarters in 11:21:01  
11 Richmond. 11:21:04  
12 Q Were there any buyers throughout the 11:21:07  
13 relevant period located at another location other 11:21:09  
14 than Richmond? 11:21:12  
15 A No. 11:21:13  
16 Q Was there a position at Circuit City 11:21:16  
17 that had the ultimate authority to approve a 11:21:24  
18 buyer's decision of which vendors to purchase CRT 11:21:26  
19 products from? 11:21:30  
20 A I'm not sure I understand the question. 11:21:31  
21 Q Was there anyone supervising the buyers' 11:21:33  
22 decisions of which vendors to purchase CRT 11:21:36  
23 finished products from? 11:21:38  
24 A The buyers had supervisors, but it was 11:21:40  
25 not common practice for the supervisors to direct 11:21:43

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1 the purchases. 11:21:49  
2 Q Was it the buyers who were responsible 11:22:00  
3 for negotiating CRT finished product costs? 11:22:02  
4 A Yes. 11:22:05  
5 Q Was there a division at Circuit City 11:22:10  
6 responsible for setting the prices at which CRT 11:22:12  
7 finished products would be sold? 11:22:14  
8 A Yes. 11:22:18  
9 Q What was that division? 11:22:19  
10 A Also the merchandising division and also 11:22:21  
11 specifically the buyer. 11:22:24  
12 Q Did the buyer have final authority on 11:22:28  
13 the ultimate sales price of a CRT finished 11:22:31  
14 product? 11:22:34  
15 MR. LAFFAD: Objection, form. 11:22:35  
16 THE WITNESS: Again, I am not sure 11:22:38  
17 exactly what you mean when you say by "final 11:22:39  
18 authority." The buyers set the price. 11:22:42  
19 BY MS. LIN: 11:22:45  
20 Q After a buyer sets a price at which a 11:22:45  
21 CRT finished product would be sold, were there any 11:22:48  
22 means by which that price would change? 11:22:50  
23 A Yes. 11:22:53  
24 Q How might a price set by a buyer for the 11:22:54  
25 sale of a CRT finished product change? 11:22:57

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1 A The buyer may choose to put the product 11:23:01  
2 on sale. The store may choose to change the price 11:23:04  
3 based on predetermined competitors and you could 11:23:14  
4 also have the store change the price if the 11:23:19  
5 product is damaged. 11:23:23  
6 Q You mentioned that a store could change 11:23:36  
7 a price based on predetermined competitors? 11:23:39  
8 A Yes. 11:23:42  
9 Q How did that process work? 11:23:42  
10 A Again, because it's a long period of 11:23:44  
11 time, the specifics would change, but the general 11:23:48  
12 process was that the operations group that run the 11:23:54  
13 stores in conjunction with the buyers would make a 11:23:58  
14 determination of who the key competitors were for 11:24:02  
15 that store, that area, that region, or national, 11:24:07  
16 and set out the rules that said, "We will react to 11:24:14  
17 this or we will get reacting," because they were 11:24:21  
18 not all solid. 11:24:28  
19 You would have a review that says, "Here 11:24:29  
20 are the pieces that we don't look competitive on." 11:24:30  
21 Now there is a discussion about whether we will 11:24:35  
22 react or not. 11:24:38  
23 Q Did the stores have the independent 11:24:41  
24 ability to react to those prices? 11:24:44  
25 A Yes had very short windows, so again, 11:24:47

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1 they would within these parameters, it might be 11:24:51  
2 generally you would be able to do it during a week 11:24:55  
3 which is the general ad cycle. 11:24:59  
4 Sometimes that became much shorter, and 11:25:03  
5 sometimes it got eliminated, sometimes we 11:25:06  
6 eliminate reacting during the Christmas period. 11:25:09  
7 Q You mentioned an operations group, what 11:25:15  
8 are those? 11:25:18  
9 A The operations groups are literally the 11:25:19  
10 people who run the stores, your store managers, 11:25:21  
11 your district managers, the sales associates, 11:25:25  
12 everybody that is in the store. 11:25:27  
13 Q Is each store a distinct operating 11:25:29  
14 group? 11:25:32  
15 A Yes, as far as us being able to identify 11:25:32  
16 them, obviously, they are Circuit City Stores, 11:25:37  
17 Inc., but each store has a number. 11:25:41  
18 Q Do you recall the sizes of CRT 11:25:59  
19 televisions that Circuit City sold during the 11:26:03  
20 relevant period? 11:26:06  
21 A I could probably rattle off most of them 11:26:08  
22 just from -- well, actually used to sell them. So 11:26:11  
23 we had the 13 inch, the 19 inch, and 20 inch and 11:26:16  
24 24 inch and I believe there was a period where we 11:26:20  
25 had 30, and 35, and 40 inch. 11:26:23

8 (Pages 26 - 29)

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1 All of those would have been displayed. 11:26:26  
2 There may have been some other sizes like 21 in 11:26:28  
3 there. Monitors worked a little different. 11:26:31  
4 For a long time, especially CRT 11:26:37  
5 monitors, were pretty much all 13 inch and then 11:26:40  
6 there were some 19 inch, and these, of course, are 11:26:44  
7 measured diagonally. 11:26:48  
8 When I bought the combo product, I 11:26:52  
9 believe our largest ones were 20, if I am not 11:26:56  
10 mistaken, so we had 13 inch, 19 inch, and 20 inch. 11:27:03  
11 Q Did the sizes of CRT finished products 11:27:08  
12 that Circuit City sold change over the course of 11:27:12  
13 the relevant period? 11:27:14  
14 A Yes. 11:27:16  
15 Q Do you recall if there were any trends 11:27:18  
16 in the way they were changing over the relevant 11:27:19  
17 period? 11:27:21  
18 A They became larger. So there were 11:27:24  
19 introductions of larger and larger sizes during 11:27:29  
20 the period and that is about all I can say for 11:27:32  
21 sure. 11:27:38  
22 Q Was there any position at Circuit City 11:27:41  
23 responsible for deciding what size CRT finished 11:27:44  
24 products to purchase at a given time? 11:27:47  
25 A The buyer would make the decision with 11:27:49

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1 some guidance from their supervisors on capacity 11:27:54  
2 because you might have a buyer who buys nothing 11:28:03  
3 but 13 inch and another buyer buys 19 inch, and 11:28:07  
4 you only have that amount of display space, so 11:28:11  
5 there has to be a consensus on how many inches <sup>you</sup> 11:28:14  
6 is going to have. 11:28:19  
7 Q Was there a way that buyers' 11:28:19  
8 responsibilities were divided among CRT products, 11:28:22  
9 for instance, by product size or product vendor? 11:28:25  
10 A Yes. 11:28:29  
11 Q How did that division work? 11:28:30  
12 A It would have been changed over the 11:28:33  
13 years, but it would have been based on specific 11:28:35  
14 features, so for example, when CRT was bigger as a 11:28:40  
15 business you might have predominantly done by 11:28:48  
16 size. 11:28:53  
17 Once other display products were 11:28:55  
18 introduced, then there was more division by the 11:28:59  
19 type of display so you may have CRT, you may have 11:29:02  
20 projection television, and so on. 11:29:06  
21 Q Do you recall approximately when Circuit 11:29:08  
22 City changed that division to focus on product 11:29:11  
23 types of televisions? 11:29:14  
24 A Each introduction requires you to do so. 11:29:18  
25 There was always some division prior to this 11:29:23

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1 period. 11:29:26  
2 There were console televisions, for 11:29:27  
3 example, so you would have somebody that was in 11:29:31  
4 charge of console televisions versus portable 11:29:33  
5 televisions so there was always some division. 11:29:37  
6 Those are represented as classes in most 11:29:41  
7 cases in our documents, and in some cases, they 11:29:47  
8 also go down to a tier level, but most buyer 11:29:51  
9 responsibility was at a class level. 11:29:55  
10 Q There were tiers within the classes? 11:29:59  
11 A Yes. 11:30:01  
12 Q Do you recall when Circuit City 11:30:02  
13 discontinued selling CRT televisions? 11:30:04  
14 A I thought we were selling them when we 11:30:07  
15 shut down, but I don't know. 11:30:13  
16 Q Do you know if Circuit City at any point 11:30:15  
17 discontinued selling CRT monitors? 11:30:18  
18 A I do not, no. 11:30:21  
19 THE REPORTER: That answer always 11:30:22  
20 stumbles me. "I do not know" is that k n o 11:30:22  
21 w? Or is it "I do not, no," period. 11:30:22  
22 THE WITNESS: K n o w. 11:30:22  
23 THE REPORTER: Thank you. 11:30:22  
24 BY MS. LIN: 11:30:22  
25 Q Did Circuit City have different 11:30:40

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1 procurement procedures related to CRT monitors 11:30:43  
2 versus CRT televisions? 11:30:45  
3 A The procedures would have been the same. 11:30:49  
4 Q How did Circuit City's buyers identify 11:30:55  
5 the CRT finished products they wanted to purchase? 11:30:58  
6 A This could be a long answer. Quite a 11:31:02  
7 few different factors. You start off demand. 11:31:09  
8 You have got historical demand that you 11:31:14  
9 are looking at that says, "We have sold so many of 11:31:18  
10 these at a certain price, et cetera," and you 11:31:21  
11 combine that with industry forecast on what you 11:31:23  
12 believe is going to be the demand over the period 11:31:29  
13 of time usually a year at a time. 11:31:32  
14 After you have done your general demand 11:31:39  
15 which is combined with what your available space 11:31:43  
16 is, you're going to make your determinations on 11:31:47  
17 the size of this. 11:31:53  
18 Once you have got the size of the 11:31:57  
19 assortment, then you listen to the presentations 11:32:00  
20 from all the vendors that we either are doing 11:32:02  
21 business with, or that want to do business with 11:32:06  
22 us, and make the decisions based on, again, demand 11:32:09  
23 first. 11:32:17  
24 You might be meeting with Sony and you 11:32:17  
25 know that Sony's is 25 percent of the industry. 11:32:21

9 (Pages 30 - 33)

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1 So it is probably reasonable to carry 25 percent 11:32:25  
2 of your assortment in Sony. 11:32:29  
3 Then you go to all of the other factors 11:32:33  
4 which, of course, includes costs and it includes 11:32:36  
5 the vendor's performance history, have they been 11:32:46  
6 on time with delivery, have they kept you in 11:32:50  
7 stock, have they supported the sell through 11:32:53  
8 product? There are a lot of other smaller factors 11:32:59  
9 that come into it, but that is basically the 11:33:04  
10 process. 11:33:07  
11 Q You referenced determining the size of 11:33:11  
12 an assortment. Does that mean the number of 11:33:14  
13 products? 11:33:16  
14 A Yes. 11:33:16  
15 Q Is there any industry forecasting that 11:33:27  
16 Circuit City typically relied on in selecting its 11:33:27  
17 CRT finished product purchases was done on an 11:33:29  
18 annual basis? 11:33:32  
19 A Most of our plans were done on an annual 11:33:33  
20 basis because of both the cycle of introduction of 11:33:38  
21 product and because of budget planning, et cetera. 11:33:42  
22 Those would be revamped generally about 11:33:48  
23 half way through the year, you might make some 11:33:51  
24 additional purchases and you may stop buying some 11:33:54  
25 of the products that you bought before, but you 11:33:59

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1 generally did not change the whole assortment. 11:34:03  
2 CRTs, television products specifically, 11:34:07  
3 had a very strong fall introduction period, and so 11:34:11  
4 it did not match, Circuit City's fiscal year was 11:34:17  
5 from March to February if I remember correctly, so 11:34:24  
6 it did not match the fiscal year quite the same as 11:34:27  
7 some of the categories that I managed, and did, so 11:34:31  
8 they were a little more active on the every six 11:34:33  
9 months basis than other categories. 11:34:38  
10 Q Typically CRT finished product purchase 11:34:40  
11 decisions would be made on a semi-annual basis? 11:34:43  
12 A Yes. 11:34:47  
13 MR. LAHAD: Objectinn, misstates the 11:34:49  
14 testimony. Give me a second to butt in. 11:34:50  
15 THE WITNESS: You have to kick me. 11:34:56  
16 BY MS. LIN: 11:34:58  
17 Q You referenced earlier that in making 11:34:58  
18 its CRT finished product purchasing decisions 11:35:01  
19 Circuit City's buyers would listen to vendor 11:35:04  
20 presentations, how would the specific vendors be 11:35:07  
21 selected to give these presentations? 11:35:12  
22 A They would be selected based on the fact 11:35:15  
23 that you had been doing business with them. 11:35:20  
24 If you were doing business with them, 11:35:23  
25 then you would be talking to them again, and also 11:35:27

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1 when other vendors requested the opportunity to 11:35:30  
2 present us product, and in some rare cases because 11:35:34  
3 we did business with most vendors, in rare cases 11:35:42  
4 we might reach out to a vendor that we currently 11:35:46  
5 are not doing business with, and say, "We have an 11:35:48  
6 interest." 11:35:52  
7 Q In those rare cases when Circuit City 11:35:56  
8 would reach out to a vendor and express an 11:35:58  
9 interest, do you know why Circuit City would do so 11:36:00  
10 in this CRT finished product context? 11:36:05  
11 A Either we saw that there was demand for 11:36:07  
12 their product or there was what we would refer to 11:36:13  
13 as a role in assortment, meaning, there was a role 11:36:17  
14 that we needed playing that our current vendors 11:36:21  
15 could not provide. 11:36:25  
16 For example, it might be that none of 11:36:26  
17 the suppliers that we have are doing business with 11:36:30  
18 a specific price point, and so we know that a 11:36:35  
19 vendor that we are not doing business with has a 11:36:40  
20 product at that price and we would contact them. 11:36:43  
21 and say, "Are you interested in selling that to 11:36:46  
22 us?" 11:36:48  
23 Q You also reference in your answer 11:36:50  
24 regarding procurement procedures that, for 11:36:52  
25 instance, if Sony had 25 percent of the market 11:36:56

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1 that Circuit City might want 25 percent of its 11:36:59  
2 assortment to come from Sony, do you remember that 11:37:01  
3 testimony? 11:37:04  
4 A Yes. 11:37:05  
5 Q Would Circuit City generally try to 11:37:05  
6 match the percentage market share of its vendors 11:37:08  
7 in the market with the products Circuit City would 11:37:11  
8 be selling from those vendors? 11:37:16  
9 A Generally is too open for me to answer 11:37:21  
10 that as a yes or no. We took it in as a factor 11:37:25  
11 and we would want to know and we would want to be 11:37:30  
12 deliberate in the fact that we were under buying 11:37:36  
13 or over buying a particular vendor and know that 11:37:41  
14 we had done so. 11:37:45  
15 Q You would want to make a particular 11:37:49  
16 decision if you were going to purchase a vendor's 11:37:59  
17 quantities either above or below their market 11:38:01  
18 share in the entire market? 11:38:04  
19 A We would want to know that we were doing 11:38:06  
20 so, and it would be deliberate that we had done 11:38:09  
21 so. 11:38:11  
22 I will give you one example. We may 11:38:13  
23 look at a product that's only carried at Wal-Mart 11:38:16  
24 and it is 10 percent of the market share. 11:38:23  
25 We are not necessarily going to go out 11:38:28

10 (Pages 34 - 37)

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1 and buy that 10 percent because of the role that 11:38:29  
2 it's playing for that product. 11:38:33  
3 There are demand brands and so if there 11:38:34  
4 is a high demand brand, and the way we would 11:38:38  
5 define demand brands, is a brand that the customer 11:38:41  
6 walks in the door, and if they do not see it they 11:38:44  
7 are likely not to buy from you, and so, those are 11:38:46  
8 typically the brand names that are off the top of 11:38:50  
9 your head as a consumer and those products we 11:38:54  
10 would be more likely to buy closer to demand. 11:39:02  
11 Q Do you recall which vendors during the 11:39:12  
12 relevant period sold demand brand CRT finished 11:39:15  
13 products? 11:39:18  
14 A Again, their relevant demand would 11:39:20  
15 change, but typically, all of the major brands, 11:39:24  
16 Hitachi, Sony, JVC, and Toshiba they all had a 11:39:29  
17 significant market share, and again, if it's a 11:39:39  
18 major brand name that the consumer is going to 11:39:48  
19 know, then buy. 11:39:53  
20 Q Do you know if LG Electronics was ever a 11:39:59  
21 demand brand for CRT finished products during the 11:40:03  
22 relevant period? 11:40:05  
23 A I do not know. 11:40:06  
24 Q Did Circuit City ever purchase its CRT 11:40:12  
25 from its products direct from the CRT finished 11:40:16

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1 products manufacturers? 11:40:18  
2 A I don't know because I don't believe 11:40:24  
3 that we would know who made the CRT. 11:40:27  
4 Q From the manufacturer creating the CRT 11:40:32  
5 finished product, did Circuit City ever purchase 11:40:36  
6 directly from those manufacturers? 11:40:39  
7 A Yes. 11:40:41  
8 Q Were there instances when Circuit City 11:40:42  
9 purchased CRT finished products from distributors 11:40:45  
10 who were not the manufacturers of the CRT finished 11:40:47  
11 products? 11:40:50  
12 A Our experience with distributors was 11:40:54  
13 pretty limited to extremely small purchases that 11:40:57  
14 were used for our e-Commerce division. 11:41:02  
15 Q Were there other instances besides 11:41:10  
16 e-Commerce where Circuit City would purchase CRT 11:41:13  
17 finished products from distributors? 11:41:15  
18 A I don't know of any case. I never did. 11:41:18  
19 Q Do you know why distributors were used 11:41:20  
20 in e-Commerce context? 11:41:22  
21 A Because of the size of purchase. 11:41:24  
22 Q Would that be because it was a 11:41:28  
23 small-size purchase? 11:41:30  
24 A Yes. We are talking about -- so you 11:41:31  
25 want to put maybe four more items on the web than 11:41:37

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1 what you carry in the store, but they do not sell. 11:41:40  
2 You are only buying like once a month or 11:41:44  
3 one every other month, so that doesn't fit the 11:41:47  
4 rest of our way we do business where we are buying 11:41:53  
5 directly from the vendor. 11:41:58  
6 Q Do you know whether the distributors 11:42:02  
7 from which Circuit City purchased CRT finished 11:42:05  
8 products were located exclusively within the 11:42:08  
9 United States? 11:42:11  
10 A I believe that's the case. 11:42:14  
11 Q Do you know whether the manufacturers 11:42:17  
12 from which Circuit City purchased its CRT finished 11:42:23  
13 products were located exclusively within the 11:42:27  
14 United States? 11:42:30  
15 A All of the buyers negotiations and 11:42:30  
16 purchases were done with U.S. held companies that 11:42:36  
17 I, yes, experienced in seeing, et cetera. 11:42:41  
18 MR. GRALEWSKI: I apologize, the witness 11:42:51  
19 cut out. Could I ask the court reporter to 11:42:53  
20 read back that answer. 11:42:55  
21 (Whereupon, record was read.) 11:43:09  
22 BY MS. LIN: 11:43:09  
23 Q When you say U.S. held companies, do you 11:43:10  
24 mean companies headquartered in the United States? 11:43:13  
25 A Yes. 11:43:16

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1 Q Are you aware of any exceptions in which 11:43:18  
2 CRT finished products purchases were negotiated 11:43:20  
3 with manufacturers located outside of the United 11:43:25  
4 States? 11:43:27  
5 A I don't know. I am not saying that the 11:43:32  
6 product wasn't manufactured outside of the United 11:43:36  
7 States. 11:43:38  
8 I am saying that we would deal with a 11:43:39  
9 company and they may have an outside of the U.S. 11:43:42  
10 presence, most of them did, but when we negotiated 11:43:47  
11 price and we created a purchase order, those 11:43:51  
12 purchase orders were to their U.S. held divisions 11:43:55  
13 or otherwise you would be importing the product 11:44:03  
14 and that is something that they did, not us, as 11:44:06  
15 far as I know of. 11:44:11  
16 Q Are you aware of any instances when 11:44:17  
17 Circuit City's purchase orders for CRT finished 11:44:19  
18 products were sent outside of the United States? 11:44:21  
19 A I believe the U.S. group would share 11:44:26  
20 their purchase orders with all of their companies, 11:44:29  
21 so conversations about forecasted need were back 11:44:31  
22 and forth between a supplier at every level and 11:44:42  
23 Circuit City at several levels. 11:44:48  
24 Q I'm sorry. You've lost me. Do you mean 11:44:52  
25 suppliers within Circuit City? 11:44:55

11 (Pages 38 - 41)

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1 A No, vendors. I changed the word for 11:44:56  
2 you. I am sorry. But because the U.S. group had 11:44:58  
3 to make sure that we had adequate supply, they 11:45:04  
4 would have to share any information about 11:45:08  
5 purchases and sales with their entire company. 11:45:10  
6 Q I'm not sure I'm understanding, so the 11:45:19  
7 vendors that Circuit City was speaking to in the 11:45:21  
8 United States, Circuit City understood them, them 11:45:23  
9 being the vendor, to share information throughout 11:45:25  
10 the vendor's company? 11:45:29  
11 A Correct. I will use an example. We 11:45:31  
12 forecast our needs and our inventory team 11:45:39  
13 specifically says, "We are going to need this 11:45:44  
14 amount of product over a period of time," and so 11:45:46  
15 we would transfer that data to the vendor saying, 11:45:50  
16 "This is what our forecasted needs are," and most 11:45:54  
17 cases we also showed them what our sales were. 11:45:58  
18 That data, since the U.S. company is a 11:46:02  
19 sales company they have to share that data with 11:46:09  
20 their manufacturing divisions. 11:46:13  
21 Q Did Circuit City's employees to your 11:46:25  
22 knowledge ever take part in those discussions with 11:46:29  
23 the manufacturers above the U.S. sales entities? 11:46:35  
24 MR. LAHAD: Objection, vague. 11:46:42  
25 THE WITNESS: Yes, I am not -- 11:46:43

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1 BY MR. GRALEWSKI: 11:46:46  
2 Q Would Circuit City's buyers ever have 11:46:47  
3 contact with any vendors apart from the sales 11:46:50  
4 entities located in the United States? 11:46:53  
5 A Yes. 11:46:55  
6 Q In what capacity would that happen? 11:46:57  
7 A Seeing new product lineups and learning 11:47:01  
8 about the feature, learning about the new product 11:47:11  
9 primarily. 11:47:13  
10 Q Would purchase negotiations ever be 11:47:14  
11 conducted between Circuit City and an entity other 11:47:16  
12 than a U.S. based sales entity of a vendor? 11:47:20  
13 A ~~Correct. Yes.~~ 11:47:23  
14 Q Was there a process that Circuit City 11:47:23  
15 used in negotiating prices for its purchases of 11:47:43  
16 CRT finished products? 11:47:46  
17 A We did not negotiate prices. When I 11:47:49  
18 refer to price, I refer to price as being what we 11:47:53  
19 sell it at. 11:47:57  
20 Q I'm sorry. What term would you use to 11:47:58  
21 discuss that? Would it be cost? 11:48:02  
22 A Cost. 11:48:03  
23 Q So the cost in this context would be 11:48:05  
24 from the vendor to Circuit City to acquire the CRT 11:48:08  
25 finished product? 11:48:11

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1 A Correct. 11:48:12  
2 Q Was there a process that Circuit City 11:48:12  
3 used to negotiate that cost for CRT finished 11:48:14  
4 products? 11:48:18  
5 A There wasn't a formalized, "This is the 11:48:18  
6 process," if that is what you are looking for. 11:48:35  
7 But just the act of doing it creates a 11:48:38  
8 process, and the standard, so the standard 11:48:41  
9 function is you understand what the product that 11:48:46  
10 the vendor wants to make the cost and then it is a 11:48:52  
11 matter of does that work for you and if it doesn't 11:48:56  
12 then you negotiate from there. 11:49:00  
13 Q Did Circuit City request quotes from the 11:49:01  
14 vendors for product costs? 11:49:05  
15 MR. LAHAD: Objection, vague. 11:49:08  
16 THE WITNESS: Every time an assortment 11:49:10  
17 was announced, there would generally be some 11:49:12  
18 sort of communication, "If this is what the 11:49:19  
19 product would cost for you?" 11:49:23  
20 BY MS. LIN: 11:49:24  
21 Q Typically, CRT finished product costs 11:49:25  
22 would initially be quoted by the vendor to Circuit 11:49:27  
23 City? 11:49:30  
24 A Right, that would be the beginning of 11:49:30  
25 negotiations. 11:49:32

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1 Q Did Circuit City ever employ an auction 11:49:34  
2 process in purchasing its CRT finished products? 11:49:37  
3 A Yes. 11:49:39  
4 Q How did that auction process work? 11:49:40  
5 A It's called a reverse auction and 11:49:42  
6 basically you put everybody on line at the same 11:49:46  
7 time. 11:49:51  
8 You say that you are looking for a very 11:49:52  
9 very specific product. Auctions were only used to 11:49:55  
10 my knowledge for what we would refer to as 11:50:00  
11 unbranded product, meaning, that it was not a 11:50:07  
12 major demand brand, but it could be a secondary 11:50:10  
13 type of brand. 11:50:15  
14 But the specifics would be, "We've got 11:50:19  
15 to have a 13 inch and it has got to have the 11:50:24  
16 antenna with it and all of those sort of things, 11:50:28  
17 you get a level playing field so that everybody is 11:50:30  
18 quoting the same feature set, and then I was not 11:50:33  
19 directly involved in one. 11:50:39  
20 But the process is that everybody goes 11:50:43  
21 out live with the computer feeds, and sees that 11:50:46  
22 someone has bid lower, and they can choose to 11:50:53  
23 react or not. 11:50:57  
24 They do not know who it is. 11:50:58  
25 It is blind from that viewpoint, but 11:51:01

12 (Pages 42 - 45)

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*over purchases were  
sometimes part  
of the negotiations*



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1 they are basically bidding, and in these cases you 11:51:03  
2 would say it is a set amount of product. "We want 11:51:06  
3 to buy 10,000," 11:51:12  
4 It was not part of our normal assortment 11:51:16  
5 In most cases. There could have been some cases. 11:51:22  
6 Q In Circuit City's reverse auction 11:51:29  
7 process the bidder offering the lowest price for 11:51:33  
8 the product would typically win? 11:51:35  
9 A Yes. 11:51:38  
10 Q Do you know why the auction process was 11:51:39  
11 not used for branded products? 11:51:39  
12 A Again, because you have a specific value 11:51:43  
13 of that brand -- I said almost -- it was always 11:51:49  
14 used for opening price point because that's where 11:51:56  
15 cost actually has the biggest factor, meaning, 11:52:02  
16 that it would have the least amount of features 11:52:05  
17 and the customer's primary demand for purchasing 11:52:08  
18 that product is driven by the fact that it is 11:52:12  
19 retail price, whereas, all the other factors ... 11:52:16  
20 (witness did not complete his answer.) 11:52:21  
21 Q For the unbranded products, Circuit City 11:52:24  
22 considered price to be the biggest factor used by 11:52:26  
23 the customer in purchasing those products? 11:52:29  
24 MR. LAHAD: Objection, misstates the 11:52:32  
25 testimony. 11:52:33

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1 THE WITNESS: For the opening price 11:52:33  
2 point product, cost was much more of a factor 11:52:37  
3 than in some other decisions. 11:52:43  
4 BY MS. LIN: 11:52:46  
5 Q When you say "opening price point 11:52:47  
6 product," what does that mean? 11:52:48  
7 A That means the lowest price retail 11:52:49  
8 product within a group of like product, so for 11:52:56  
9 example, a 13-inch CRT product may start as low as 11:53:01  
10 \$99, it might go to \$400, the \$99 is your opening 11:53:08  
11 price point. 11:53:15  
12 Q Did the price of Circuit City's opening 11:53:17  
13 price point products affect the price that Circuit 11:53:21  
14 City would sell its other products in that same 11:53:24  
15 category at? 11:53:27  
16 A I don't believe so. 11:53:30  
17 Q Was an unbranded product always the 11:53:37  
18 opening point price product? 11:53:45  
19 A No. 11:53:48  
20 Q Are there specific CRT finished product 11:53:49  
21 manufacturers that also sold opening point price 11:53:53  
22 products? 11:53:58  
23 A That changed over a period of time. For 11:53:59  
24 example, when I was doing the combination product 11:54:03  
25 Magnavox was selling opening price point product. 11:54:09

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1 Q Did Circuit City use its reverse auction 11:54:16  
2 process throughout the relevant period? 11:54:22  
3 A No. 11:54:24  
4 Q What years was the reverse auction 11:54:24  
5 process used for CRT finished products? 11:54:26  
6 A The process was brought to us by a head 11:54:29  
7 merchant that we had gotten from Target and he was 11:54:35  
8 with us for -- what I am looking at is my history, 11:54:39  
9 because I moved, my buying changed about right 11:54:52  
10 after he came in. 11:55:05  
11 So somewhere in 2002, to about 2004, he 11:55:06  
12 was the champion of the reverse auction process 11:55:12  
13 and that was when it was used the most to my 11:55:15  
14 knowledge. 11:55:18  
15 Q Do you know what the employee's name is? 11:55:19  
16 A I knew that you were going to ask me, 11:55:22  
17 but I cannot remember. 11:55:23  
18 Q If it comes back to you at any point 11:55:25  
19 today, please speak up. 11:55:28  
20 A Yes. 11:55:29  
21 Q In the reverse auction process, did 11:55:31  
22 Circuit City set all of the terms for the product 11:55:34  
23 purchase except for the price point? 11:55:37  
24 A Yes. 11:55:38  
25 MR. LAHAD: Objection, vague. 11:55:39

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1 THE WITNESS: To my knowledge we set as 11:55:41  
2 many things as we possibly could so that 11:55:43  
3 everything was backed down to the cost at 11:55:46  
4 that point. Again, if I might add, we did 11:55:51  
5 not do this a lot. 11:55:57  
6 BY MS. LIN: 11:55:58  
7 Q Outside of the auction process, when 11:56:00  
8 Circuit City was negotiating for CRT finished 11:56:03  
9 product purchases, were negotiations primarily 11:56:07  
10 focused on prices? 11:56:10  
11 A No, primarily, again, is a relevant 11:56:12  
12 term, but there are so many factors that cost is 11:56:17  
13 certainly one of them. 11:56:24  
14 MR. LAHAD: Your question said prices 11:56:28  
15 and he said costs. Are you asking about 11:56:28  
16 prices or cost? 11:56:31  
17 MS. LIN: I am sorry, I am asking about 11:56:32  
18 costs. 11:56:33  
19 MR. LAHAD: Then maybe you want to 11:56:34  
20 reboot that just for the cleanliness of the 11:56:35  
21 record. 11:56:37  
22 BY MS. LIN: 11:56:37  
23 Q Apart from the auction process when 11:56:38  
24 Circuit City was negotiating for CRT finished 11:56:41  
25 product costs, were costs the primary factor at 11:56:44

13 (Pages 46 - 49)

| Page 50 |   | Page 52 |  |
|---------|---|---------|--|
| 1       | issue in those negotiations? 11:56:47                     | 1       | favorable to Circuit City? 11:58:41                        |
| 2       | MR. GRALEWSKI: Objection, form. 11:56:49                  | 2       | A Yes. 11:58:43  |
| 3       | THE WITNESS: No, demand was. 11:56:51                     | 3       | Q In some instances could Circuit City be 11:58:44         |
| 4       | BY MS. LIN: 11:56:55                                      | 4       | willing to pay a higher cost for CRT finished 11:58:46     |
| 5       | Q Circuit City's ability to meet its 11:56:55             | 5       | products in exchange for a longer payment term? 11:58:48   |
| 6       | demand to purchase a quantity of CRT finished 11:57:03    | 6       | A I did not personally experience that, 11:58:53           |
| 7       | products was its driving factor in purchase 11:57:05      | 7       | but theoretically. 11:58:59                                |
| 8       | negotiations? 11:57:09                                    | 8       | Q You also mentioned, I believe, market 11:59:04           |
| 9       | MR. LAHAD: Objection, misstates the 11:57:10              | 9       | development funds, is that right? 11:59:08                 |
| 10      | testimony. 11:57:12                                       | 10      | A Yes. 11:59:09  |
| 11      | THE WITNESS: No, the customer demand. 11:57:12            | 11      | Q What were those? 11:59:10                                |
| 12      | The goal was to sell the product, so your 11:57:18        | 12      | A Market development funds are funds that 11:59:11         |
| 13      | primary motivation and your primary factor is 11:57:23    | 13      | are provided to develop a market for the product, 11:59:15 |
| 14      | always demand, how many customers are looking 11:57:25    | 14      | otherwise help you sell the product, and the 11:59:20      |
| 15      | for this product and want to buy this 11:57:28            | 15      | things that might help you sell the product 11:59:24       |
| 16      | product. 11:57:30   | 16      | include training. 11:59:26                                 |
| 17      | BY MS. LIN: 11:57:30                                      | 17      | It might include the way the product is 11:59:28           |
| 18      | Q When Circuit City was negotiating the 11:57:32          | 18      | displayed and most often it included how 11:59:31          |
| 19      | terms of its CRT product purchases which terms 11:57:35   | 19      | frequently and how the product was advertised. 11:59:38    |
| 20      | were up for negotiation with the CRT finished 11:57:39    | 20      | Q For each of those instances training, 11:59:44           |
| 21      | product vendors? 11:57:43                                 | 21      | display, and advertising the vendor would provide 11:59:46 |
| 22      | A Which terms? 11:57:44                                   | 22      | money to Circuit City to do those things? 11:59:49         |
| 23      | Q Yes. 11:57:46   | 23      | A They may. 11:59:52                                       |
| 24      | MR. GRALEWSKI: Objection, form. 11:57:47                  | 24      | Q In negotiating the purchase of CRT 11:59:55              |
| 25      | BY MS. LIN: 11:57:49                                      | 25      | finished products, would Circuit City ever accept 11:59:58 |
| Page 51 |   | Page 53 |  |
| 1       | Q For instance, you negotiated costs with 11:57:49        | 1       | a higher cost in exchange for additional vendor 12:00:01   |
| 2       | you being Circuit City negotiated cost with CRT 11:57:52  | 2       | funds? 12:00:05  |
| 3       | finished product vendors, correct? 11:57:55               | 3       | MR. LAHAD: Objection, vague. 12:00:09                      |
| 4       | A Correct. 11:57:57                                       | 4       | THE WITNESS: I can only answer that 12:00:10               |
| 5       | MR. GRALEWSKI: Objection. 11:57:58                        | 5       | question when talking process. Process wise, 12:00:12      |
| 6       | BY MS. LIN: 11:57:59                                      | 6       | we were taught to buy the product and 12:00:16             |
| 7       | Q Were there other things in addition to 11:58:00         | 7       | negotiate the cost of the product, and once 12:00:19       |
| 8       | costs that were typically negotiated with CRT 11:58:01    | 8       | we finished with that, then to have 12:00:22               |
| 9       | finished product vendors? 11:58:04                        | 9       | discussions about market development funds as 12:00:25     |
| 10      | A Yes. 11:58:05   | 10      | a separate conversation. 12:00:29                          |
| 11      | MR. GRALEWSKI: Same objection. 11:58:06                   | 11      | BY MS. LIN: 12:00:30                                       |
| 12      | BY MS. LIN: 11:58:07                                      | 12      | Q Did Circuit City have any type of 12:00:36               |
| 13      | Q What else was under negotiation in 11:58:07             | 13      | leverage to obtain market development funds? 12:00:39      |
| 14      | addition to costs? 11:58:10                               | 14      | MR. LAHAD: Objection, vague. 12:00:42                      |
| 15      | MR. GRALEWSKI: Objection. 11:58:11                        | 15      | MR. GRALEWSKI: Can we have the same 12:00:45               |
| 16      | THE WITNESS: You may have payment terms 11:58:13          | 16      | agreement in this deposition that an 12:00:47              |
| 17      | and you might also negotiate market 11:58:16              | 17      | objection by one is an objection by all? 12:00:50          |
| 18      | development funds. 11:58:22                               | 18      | MS. LIN: An objection by all 12:00:54                      |
| 19      | BY MS. LIN: 11:58:23                                      | 19      | plaintiffs, yes. 12:00:55                                  |
| 20      | Q When you say payment terms, what does 11:58:24          | 20      | MR. GRALEWSKI: Thank you. 12:00:57                         |
| 21      | that mean? 11:58:26                                       | 21      | THE WITNESS: Could you restate the 12:00:59                |
| 22      | A That means whether they are paid in 30 11:58:27         | 22      | question. 12:01:00   |
| 23      | days or they are due in 30 days or 60 days or 90 11:58:30 | 23      | BY MS. LIN: 12:01:00                                       |
| 24      | days, for example. 11:58:34                               | 24      | Q Sure, so for instance, once Circuit City 12:01:01        |
| 25      | Q Would a long payment term be more 11:58:38              | 25      | had agreed on a cost term of a CRT finished 12:01:04       |

14 (Pages 50 - 53)

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1 product purchase, what could be used to persuade a 12:01:08

2 vendor to also provide additional market 12:01:11

3 development funds? 12:01:14

4 A Primarily our visibility in the 12:01:15

5 marketplace because we were one of the largest 12:01:18

6 advertisers in the United States. 12:01:22

7 Also the fact that we had 600 something 12:01:24

8 stores where their product would be available to 12:01:29

9 be seen by the consumer. 12:01:31

10 The fact that we presented an 12:01:35

11 opportunity for the product to be seen and heard 12:01:38

12 and learned about was our leverage otherwise we 12:01:41

13 had the ability to sell the product. 12:01:47

14 Q That gave you negotiating power with the 12:01:49

15 CRT finished product vendors? 12:01:51

16 MR. LAHAD: Objection, misstates 12:01:54

17 testimony. 12:01:56

18 BY MS. LIN: 12:01:57

19 Q Circuit City strength in the market 12:01:57

20 improved Circuit City's negotiating position with 12:01:59

21 CRT finished product manufacturers? 12:02:02

22 MR. LAHAD: Same objection. 12:02:04

23 THE WITNESS: I don't know whether it 12:02:06

24 did in the way that you are asking the 12:02:08

25 question. 12:02:10

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1 In some cases the reverse would happen 12:02:14

2 and the vendor doesn't want their product in 12:02:18

3 that many stores. They would rather have it 12:02:21

4 in a few elite stores, so I can't say that 12:02:24

5 we got cost based on that or that we had a 12:02:32

6 leverage based on that. 12:02:36

7 BY MS. LIN: 12:02:37

8 Q Would Circuit City purchase CRT finished 12:02:40

9 products for the company as a whole versus 12:02:43

10 purchasing for specific stores? 12:02:48

11 A We bought for the company as a whole and 12:02:51

12 then decided how many stores we would put it in. 12:02:55

13 Q Did the CRT finished product 12:02:58

14 manufacturer that Circuit City purchased from have 12:03:01

15 any role in deciding which Circuit City Stores its 12:03:04

16 product would end up in? 12:03:07

17 A To the degree of supply, if they said, 12:03:09

18 "We are going to be able to supply more than 100 12:03:13

19 stores," then we wouldn't program more than 100 12:03:17

20 stores. 12:03:21

21 But as far as choosing the specific 12:03:22

22 stores, that would have been a highly unusual 12:03:25

23 conversation and not one that I was party to. 12:03:32

24 MR. LAHAD: Is now a good time to break 12:03:36

25 for lunch? 12:03:36

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1 MS. LIN: Yes, now would be a great time 12:03:37

2 to take a break. 12:03:37

3 THE VIDEOGRAPHER: The time is 12:03:38

4 approximately 12:03 p.m. We are off the 12:03:39

5 record. 12:03:42

6 AFTERNOON SESSION 12:03:42

7 (12:42 p.m.) 12:03:42

8 THE VIDEOGRAPHER: The time is 12:42 12:42:44

9 p.m. We are back on the record. 12:42:46

10 MS. LIN: Thank you, Mr. Deason. 12:42:49

11 BY MS. LIN: 12:42:50

12 Q Do you understand that you are still 12:42:50

13 under oath? 12:42:51

14 A Yes. 12:42:51

15 Q To your knowledge, did Circuit City ever 12:42:52

16 purchase CRT finished products from a Hitachi 12:42:56

17 related entity during the relevant period? 12:42:58

18 A I don't know whether we bought CRT 12:43:00

19 product from Hitachi. I know we were doing 12:43:03

20 business with Hitachi Television during the 12:43:06

21 period. 12:43:07

22 Q Do you know if Circuit City bought any 12:43:09

23 CRT finished products from LG Electronics during 12:43:11

24 the relevant period? 12:43:16

25 A Again, I cannot specifically say without 12:43:17

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1 looking at the reports, so I will just stop it 12:43:20

2 there. 12:43:23

3 Q What about Panasonic? 12:43:24

4 A Panasonic because I bought a Panasonic 12:43:27

5 television, I know we sold them, yes. 12:43:30

6 Q Do you know which CRT finished products 12:43:32

7 from Panasonic Circuit City sold? 12:43:35

8 A I do not know all the specifics. 12:43:38

9 Q What about Phillips? Phillips related 12:43:39

10 entities? 12:43:44

11 A Again, I would not know the specifics. 12:43:45

12 Q Would that be true for any number of 12:43:47

13 manufacturers I might list? 12:43:50

14 A Yes. 12:43:51

15 Q Do you know how many CRT finished 12:43:52

16 products in any particular size category that 12:43:55

17 Circuit City would sell at one time? 12:44:00

18 A No. 12:44:01

19 Q We discussed before lunch how there 12:44:02

20 would be high value products and low value 12:44:07

21 products within the same size category of CRT 12:44:12

22 finished products, do you remember that? 12:44:16

23 A Yes. 12:44:17

24 Q Was there any time during the relevant 12:44:17

25 period when Circuit City ceased to carry low-end 12:44:19

15 (Pages 54 - 57)

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1 CRT products? 12:44:22  
2 MR. LAHAD: Objection, vague. 12:44:26  
3 THE WITNESS: I do not know. 12:44:27  
4 BY MS. LIN: 12:44:28  
5 Q Was the range of CRT finished products 12:44:28  
6 at Circuit City sold reduced towards the end of 12:44:34  
7 the relevant period? 12:44:38  
8 A Again, I wouldn't have specific 12:44:40  
9 knowledge, but the fact that their LCD product was 12:44:43  
10 introduced, it is possible. 12:44:48  
11 Q We discussed combo products this 12:44:53  
12 morning. Were there any combo CRT finished 12:44:57  
13 products that were monitors sold by Circuit City? 12:45:00  
14 A My definition of a combo product was the 12:45:06  
15 television product with either a DVD or a VCR in 12:45:09  
16 it, so based on that definition the answer is no. 12:45:13  
17 Q Did Circuit City sell any computers that 12:45:16  
18 contained a CRT finished product and the computer 12:45:19  
19 itself within the same place? 12:45:22  
20 MR. LAHAD: Objection, vague. 12:45:26  
21 THE WITNESS: I don't know. 12:45:27  
22 BY MS. LIN: 12:45:28  
23 Q When we were discussing CRT finished 12:45:29  
24 products, that would be at a low or a high end of 12:45:39  
25 a continuum within the same product category, were 12:45:43

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1 there certain factors that made products fall at 12:45:47  
2 the higher end of that price category? 12:45:50  
3 A If they were more full featured, then 12:45:52  
4 they would be in the higher end, and if they were 12:45:55  
5 a basic less featured product, would be in the 12:45:57  
6 lower end. 12:46:00  
7 Q Were there certain brands that tended to 12:46:03  
8 be at one end or another? 12:46:05  
9 A Yes. 12:46:08  
10 Q Which brands fell at the high end of CRT 12:46:12  
11 finished product price points? 12:46:17  
12 A Most of your -- again, consumer 12:46:20  
13 recognized brands like Panasonic, Sony, Samsung 12:46:23  
14 might have been at the higher end and the brands 12:46:31  
15 that maybe were less recognized by consumers would 12:46:34  
16 be at the lower end and that could change over a 12:46:38  
17 period of time because at one point Samsung was 12:46:42  
18 primarily at the opening price points, and over 12:46:46  
19 the period that we're talking about they changed 12:46:50  
20 from being opening to being more of a premium 12:46:53  
21 product. 12:46:56  
22 Q During the time that Circuit City was 12:47:00  
23 purchasing CRT finished products, did Circuit City 12:47:02  
24 ever know the entity that manufactured CRT within 12:47:05  
25 the finished product? 12:47:10

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1 A I looked at that question on the 12:47:14  
2 deposition and we visited factories, so it is 12:47:17  
3 possible or probable that a buyer was in a factory 12:47:23  
4 and saw a product that we bought actually either 12:47:29  
5 making a picture tube or something like that. 12:47:34  
6 I did not have specific knowledge of 12:47:37  
7 doing it. I never did that. 12:47:39  
8 Q Would there be a way now for someone to 12:47:42  
9 determine which entity manufactured a CRT within a 12:47:47  
10 CRT finished product sold by Circuit City? 12:47:51  
11 A Not with Circuit City. 12:47:53  
12 MR. GRALEWSKI: Objection, form. 12:47:55  
13 THE WITNESS: Not from Circuit City's 12:47:58  
14 viewpoint. I would assume the vendor could 12:48:01  
15 provide that information but we could not. 12:48:05  
16 BY MS. LIN: 12:48:07  
17 Q Did Circuit City know whether the CRTs 12:48:09  
18 contained in the CRT finished products it 12:48:13  
19 purchased were manufactured in the United States? 12:48:15  
20 A They may have known. I am not sure we 12:48:20  
21 cared. 12:48:24  
22 Q Does Circuit City know at the present 12:48:26  
23 where the CRTs contained in the CRT finished 12:48:28  
24 products that sold were manufactured? 12:48:30  
25 A I don't understand the question. 12:48:34

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1 Q You said Circuit City might have known 12:48:36  
2 at some point in time where a CRT within a CRT 12:48:38  
3 finished product had been manufactured. Is that 12:48:41  
4 something that anyone with the company would still 12:48:43  
5 know? 12:48:46  
6 MR. LAHAD: Are you talking about the 12:48:46  
7 Trust? 12:48:48  
8 MS. LIN: Yes. 12:48:48  
9 THE WITNESS: Again, it would have to be 12:48:49  
10 a one on one type of experience where a buyer 12:48:55  
11 who went over to see LG and Samsung which we 12:48:58  
12 did a couple of times a year go over and see 12:49:05  
13 the product, if they happened to see a 12:49:08  
14 manufacturing facility, then they would do 12:49:12  
15 it, but it wouldn't have been, again, there 12:49:14  
16 was no need for us to know where the product, 12:49:19  
17 where the CRT was manufactured. 12:49:23  
18 BY MS. LIN: 12:49:25  
19 Q Was the identity of the entity making 12:49:28  
20 the CRT ever considered by Circuit City as part of 12:49:32  
21 the finished product purchasing decisions? 12:49:36  
22 A I wouldn't think so. 12:49:39  
23 Q Do you know for the CRT finished 12:49:40  
24 products that Circuit City purchased what 12:49:48  
25 percentage of the purchase price was attributable 12:49:50

16 (Pages 58 - 61)

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1 to the cost of that CRT? 12:49:54  
2 A No. 12:49:55  
3 Q Would there be a way for Circuit City to 12:49:56  
4 determine that information? 12:49:59  
5 A No. 12:50:00  
6 MR. GRALEWSKI: Objection, form. 12:50:02  
7 BY MS. LIN: 12:50:03  
8 Q You testified before lunch that 12:50:09  
9 typically in a cost negotiation with a vendor 12:50:11  
10 regarding a CRT finished product that typically a 12:50:16  
11 vendor would be the first to throw out a cost 12:50:18  
12 term, do you recall that testimony? 12:50:22  
13 A Yes. 12:50:23  
14 Q Was Circuit City typically able to 12:50:24  
15 negotiate more favorable cost terms than those 12:50:26  
16 starting cost terms provided by a CRT finished 12:50:29  
17 product vendor? 12:50:31  
18 MR. LAHAD: Vague. 12:50:34  
19 MR. GRALEWSKI: Objection, form. 12:50:36  
20 THE WITNESS: Reask the question, 12:50:38  
21 please. 12:50:42  
22 BY MS. LIN: 12:50:49  
23 Q Was Circuit City ever able to negotiate 12:50:49  
24 more favorable cost terms than the starting cost 12:50:52  
25 terms provided by a CRT finished product vendor? 12:50:55

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1 A Yes. 12:50:59  
2 Q How frequently could Circuit City 12:50:59  
3 negotiate more favorable cost terms with a CRT 12:51:02  
4 finished product vendor? 12:51:05  
5 A I could not tell you in any sort of 12:51:06  
6 meaningful way. 12:51:08  
7 Q Based on your experience as a buyer of 12:51:10  
8 CRT finished products, were you able to 12:51:13  
9 successfully negotiate lower products with CRT 12:51:17  
10 finished product manufacturers? 12:51:19  
11 MR. LAHAD: You said lower products? 12:51:22  
12 MS. LIN: Lower costs. 12:51:25  
13 MR. LAHAD: Why don't you reboot that, 12:51:26  
14 for the record. 12:51:27  
15 MR. GRALEWSKI: Objection, form, outside 12:51:28  
16 the scope. 12:51:30  
17 BY MS. LIN: 12:51:33  
18 Q Based on your experience as a buyer of 12:51:33  
19 CRT finished products, were you able to 12:51:37  
20 successfully negotiate lower costs with the CRT 12:51:39  
21 finished product vendors? 12:51:42  
22 MR. GRALEWSKI: Same objection. 12:51:45  
23 THE WITNESS: The answer is, yes, not in 12:51:47  
24 all cases, but the way you asked the question 12:51:55  
25 it sounds like you want me to say that it is 12:51:58

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1 for everything. It is not, but there were 12:52:00  
2 times when I was able to. 12:52:02  
3 BY MS. LIN: 12:52:06  
4 Q Are there specific circumstances that 12:52:06  
5 you are aware of in which Circuit City was not 12:52:14  
6 able to negotiate more favorable cost terms for 12:52:16  
7 its CRT finished product purchases? 12:52:19  
8 A Again, I would have to refer to my own 12:52:26  
9 experience and there were occasions where the 12:52:29  
10 price quoted was the lowest price that I was able 12:52:32  
11 to buy the product for. 12:52:36  
12 Q Did Circuit City have any recourse if a 12:52:39  
13 vendor could not come down in price for a CRT 12:52:42  
14 finished product that CRT wanted to purchase? 12:52:46  
15 MR. LAHAD: Vague. 12:52:48  
16 MR. GRALEWSKI: Objection, form. 12:52:50  
17 THE WITNESS: Again, using the term 12:52:52  
18 cost, if the cost was not to our liking we 12:52:56  
19 might not buy the product, but in a lot of 12:53:06  
20 cases we might buy the product anyhow. 12:53:10  
21 BY MS. LIN: 12:53:13  
22 Q Would Circuit City ever withdraw its 12:53:14  
23 advertising support for a CRT finished product if 12:53:18  
24 a CRT finished product manufacturer did not reduce 12:53:20  
25 its cost? 12:53:24

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1 MR. LAHAD: Objection, lacks foundation. 12:53:25  
2 THE WITNESS: I don't know. It doesn't 12:53:35  
3 sound reasonable. 12:53:42  
4 BY MS. LIN: 12:53:43  
5 Q Would Circuit City ever reduce the 12:53:44  
6 volume of CRT finished products that it intended 12:53:57  
7 to purchase if a CRT finished product vendor would 12:54:00  
8 not meet Circuit City's requested price? Strike 12:54:03  
9 that. 12:54:05  
10 Would Circuit City ever reduce the 12:54:05  
11 volume of CRT finished products that it intended 12:54:05  
12 to purchase if a vendor would not meet Circuit 12:54:05  
13 City's requested costs? 12:54:05  
14 A If we chose to stop buying the product, 12:54:06  
15 then that is a reduction and we do make that 12:54:09  
16 decision at times 12:54:13  
17 Q Did Circuit City have any overall 12:54:20  
18 negotiating strategy with respect to trying to 12:54:23  
19 reduce CRT finished product costs? 12:54:26  
20 MR. LAHAD: Vague. 12:54:29  
21 THE WITNESS: I don't know what you mean 12:54:30  
22 as far as an overall strategy. 12:54:33  
23 BY MS. LIN: 12:54:34  
24 Q Were buyers trained in any specific 12:54:36  
25 specific tactics they could use to try to 12:54:40

17 (Pages 62 - 65)

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1 negotiate lower cost of CRT finished products? 12:54:41  
2 MR. LAHAD: Trained by Circuit City? 12:54:47  
3 MS. LIN: (Counsel motions.) 12:54:50  
4 MR. LAHAD: For the record, she nodded 12:54:50  
5 yes. 12:54:51  
6 THE WITNESS: We had basic negotiation 12:54:53  
7 training just for all purposes, whether 12:54:58  
8 managing people or buying, we had that type 12:55:05  
9 of training at various times during my tenure 12:55:09  
10 with the company and during this period of 12:55:12  
11 time. 12:55:15  
12 As for as a specific, "This is the way 12:55:16  
13 you are to negotiate with a vendor," there 12:55:21  
14 was no such training. 12:55:23  
15 BY MS. LIN: 12:55:27  
16 Q If one CRT finished product vendor 12:55:27  
17 decreased its prices, would Circuit City ever use 12:55:37  
18 that price decrease to try to negotiate lower 12:55:40  
19 prices for CRT finished products from its other 12:55:43  
20 vendors? 12:55:46  
21 MR. LAHAD: You are using price again. 12:55:47  
22 Did you mean cost? 12:55:48  
23 MS. LIN: I am sorry. Let me reask 12:55:49  
24 that. 12:55:52  
25 BY MS. LIN: 12:55:52

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1 Q If one CRT finished product vendor 12:55:52  
2 decreased its cost in Circuit City for a CRT 12:55:54  
3 finished product, would Circuit City ever use that 12:55:58  
4 cost decrease to try to negotiate lower costs with 12:56:01  
5 its other CRT finished product vendors? 12:56:03  
6 MR. GRALEWSKI: Objection, form. 12:56:07  
7 THE WITNESS: In general we would not 12:56:10  
8 discuss -- we had non-disclosure ~~agreements~~ 12:56:12  
9 agreements and so we would not discuss 12:56:16  
10 specifics on what other vendors were doing 12:56:20  
11 that was not public. 12:56:23  
12 So if another product has repositioned 12:56:27  
13 its manufactured suggested retail price, not 12:56:32  
14 its costs, but its suggested retail price. 12:56:36  
15 we did, could, and would use that 12:56:38  
16 information to have discussions about the 12:56:44  
17 manufacturer's suggested retail price and 12:56:49  
18 therefore the cost of other product. 12:56:50  
19 BY MS. LIN: 12:56:55  
20 Q So Circuit City might use a public price 12:56:56  
21 to a consumer of one CRT finished product to 12:57:00  
22 negotiate a lower cost with another CRT finished 12:57:04  
23 product vendor? 12:57:07  
24 MR. LAHAD: Objection. 12:57:09  
25 MR. GRALEWSKI: Objection, form. 12:57:10

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1 MR. LAHAD: Misstates the testimony. 12:57:12  
2 THE WITNESS: Yes. 12:57:13  
3 BY MS. LIN: 12:57:14  
4 Q Did Circuit City have any written 12:57:15  
5 guidelines related to how costs would be 12:57:20  
6 negotiated with CRT finished product vendors? 12:57:23  
7 A No. 12:57:25  
8 Q Did Circuit City have any unwritten 12:57:26  
9 guidelines regarding how costs would be negotiated 12:57:29  
10 with CRT finished product vendors? 12:57:31  
11 MR. LAHAD: Vague. 12:57:34  
12 THE WITNESS: That is what I would ask 12:57:35  
13 is, I am not sure what you mean. 12:57:37  
14 (Whereupon, Deposition Exhibit 2835 is marked for 12:57:40  
15 identification.) 12:57:40  
16 MS. LIN: I am going to hand the witness 12:58:03  
17 a document marked as Exhibit 2835, and the 12:58:03  
18 document is Bates stamped CC0572597. 12:58:06  
19 BY MS. LIN: 12:58:17  
20 Q Are you familiar with any of the people 12:58:18  
21 in Exhibit 2835? 12:58:40  
22 A Yes. 12:58:42  
23 Q Who are you familiar with? 12:58:43  
24 A I know Jay Nimechick, I know Danny 12:58:46  
25 Caglin, and I know Paul Burgess. 12:58:48

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1 Q Who is Jay Nimechick? 12:58:53  
2 A At this point he is the national account 12:58:56  
3 manager for LG Zenith Electronics USA. 12:58:59  
4 Q Who is Danny Caglin? 12:59:03  
5 A Danny Caglin was a buyer for Circuit 12:59:04  
6 City Stores. 12:59:08  
7 Q And who is Paul Burgess? 12:59:09  
8 A According to this, Paul at this time is 12:59:12  
9 working for LG USA and that is all I can tell from 12:59:15  
10 this. 12:59:19  
11 Q Looking at the last email in the chain, 12:59:22  
12 so starting at the bottom of page 1 through the 12:59:44  
13 top of page 2, reading this email through, does it 12:59:44  
14 appear to you that LG Electronics has agreed to 12:59:45  
15 reduce its costs of a CRT finished product in 12:59:49  
16 response to a request from Circuit City? 12:59:52  
17 MR. LAHAD: Objection, calls for 12:59:54  
18 speculation, the document speaks for itself. 12:59:55  
19 MR. GRALEWSKI: Objection, form. 12:59:59  
20 THE WITNESS: Can you ask again, I am 13:00:02  
21 sorry. 13:00:04  
22 MS. LIN: Can the court reporter read 13:00:07  
23 the question back? 13:00:07  
24 (Whereupon, record was read.) 13:00:07  
25 MR. LAHAD: Same objections. 13:00:43

18 (Pages 66 - 69)

| Page 70 |   |          | Page 72 |  |          |
|---------|---|----------|---------|--|----------|
| 1       | THE WITNESS: Reading the email, it  | 13:00:45 | 1       | I want to.                                       | 13:03:35 |
| 2       | appears that they have agreed to reduce the                                 | 13:00:50 | 2       | You are really talking about whether the         | 13:03:38 |
| 3       | costs, but there is also conversation about                                 | 13:00:57 | 3       | product is viable in the marketplace as a        | 13:03:40 |
| 4       | what I am assuming is manufactured suggested                                | 13:01:02 | 4       | standalone kind of a conversation.               | 13:03:46 |
| 5       | retail pricing, and so it appears that they                                 | 13:01:06 | 5       | Then once you decide whether it is               | 13:03:48 |
| 6       | are having discussions about whether the                                    | 13:01:11 | 6       | viable and it is going to sell, then you have    | 13:03:50 |
| 7       | manufacturers suggested retail price is                                     | 13:01:13 | 7       | discussions about what costs you have to have to | 13:03:53 |
| 8       | competitive.  | 13:01:16 | 8       | be at that price.                                | 13:03:56 |
| 9       | How one relates to the other, I am not                                      | 13:01:20 | 9       | Q When you have discussions about the            | 13:03:58 |
| 10      | sure from this email.   | 13:01:23 | 10      | costs, and you have to be at that price, were    | 13:04:00 |
| 11      | BY MS. LIN:   | 13:01:25 | 11      | those discussions internal to Circuit City or    | 13:04:03 |
| 12      | Q Would Circuit City request that its CRT                                   | 13:01:25 | 12      | between Circuit City and its vendors?            | 13:04:06 |
| 13      | finished product manufacturers revise their                                 | 13:01:29 | 13      | A Between Circuit City and its vendors.          | 13:04:07 |
| 14      | suggested retail pricing on CRT finished products                           | 13:01:33 | 14      | Q Would Circuit City discuss its desired         | 13:04:10 |
| 15      | to remain competitive with Circuit City's other                             | 13:01:38 | 15      | margin on a particular CRT finished product with | 13:04:14 |
| 16      | finished product vendors?   | 13:01:41 | 16      | its CRT finished product vendors?                | 13:04:17 |
| 17      | MR. LAHAD: Objection, vague.  | 13:01:43 | 17      | MR. LAHAD: Vague.                                | 13:04:20 |
| 18      | MR. GRALEWSKI: Objection, form.   | 13:01:44 | 18      | THE WITNESS: They discuss what the               | 13:04:22 |
| 19      | THE WITNESS: We would have discussions                                      | 13:01:46 | 19      | desired margin would be, and the difference,     | 13:04:24 |
| 20      | about whether their manufacturer suggested                                  | 13:01:48 | 20      | the margin that would be delivered at a          | 13:04:28 |
| 21      | retail price was going to be a fact and in                                  | 13:01:50 | 21      | manufacturer's suggested retail price,           | 13:04:29 |
| 22      | those conversations we might say, "We don't                                 | 13:01:55 | 22      | however that is not the price that Circuit       | 13:04:32 |
| 23      | think this is competitive."   | 13:01:57 | 23      | City generally was able to get in the sale of    | 13:04:35 |
| 24      | BY MS. LIN:   | 13:01:58 | 24      | product, so that was like the highest margin     | 13:04:41 |
| 25      | Q Circuit City might say to a finished                                      | 13:02:01 | 25      | you would be getting on the product, but         | 13:04:44 |
| Page 71 |   |          | Page 73 |  |          |
| 1       | product vendor that its suggested pricing would                             | 13:02:04 | 1       | those discussions, yes, happened.                | 13:04:46 |
| 2       | not be effective?   | 13:02:07 | 2       | MS. LIN: Let's go take a break to                | 13:04:48 |
| 3       | A That we don't think that that is a  | 13:02:08 | 3       | change the tape.                                 | 13:04:49 |
| 4       | competitive price. We can then choose to price it                           | 13:02:10 | 4       | THE VIDEOGRAPHER: The time is                    | 13:04:51 |
| 5       | however we wish to price it.  | 13:02:14 | 5       | approximately 1:04 p.m. This is the end of       | 13:04:51 |
| 6       | Q Would Circuit City in the context of                                      | 13:02:19 | 6       | tape number one and we are off the record.       | 13:04:54 |
| 7       | those negotiations request the CRT finished                                 | 13:02:22 | 7       | (Whereupon, a break in the proceedings           | 13:04:57 |
| 8       | product manufacturer reduce its cost to Circuit                             | 13:02:27 | 8       | commenced at 1:04 p.m. and no resuming           | 13:04:57 |
| 9       | City for selling that product?  | 13:02:30 | 9       | at 1:06 p.m.)                                    | 13:04:57 |
| 10      | A If you're having a conversation about                                     | 13:02:36 | 10      | THE VIDEOGRAPHER: The time is                    | 13:06:10 |
| 11      | whether a product is competitive or not, and                                | 13:02:38 | 11      | approximately 1:06 p.m. This is the              | 13:06:12 |
| 12      | you're expecting the retail to be one price, but                            | 13:02:45 | 12      | beginning of tape number two. We are back on     | 13:06:15 |
| 13      | it's going to be a different price, then yes, you                           | 13:02:49 | 13      | the record.                                      | 13:06:17 |
| 14      | would expect that there would be an adjustment <sup>on</sup> <del>and</del> | 13:02:52 | 14      | BY MS. LIN:                                      | 13:06:17 |
| 15      | cost to support a different price point.                                    | 13:02:55 | 15      | Q Looking at the top of the second page of       | 13:06:19 |
| 16      | Q In negotiating with its vendors to reach                                  | 13:03:00 | 16      | Exhibit 2835, do you know what is meant to       | 13:06:23 |
| 17      | a different price point, would Circuit City                                 | 13:03:02 | 17      | benchmark the pricing of a product?              | 13:06:27 |
| 18      | negotiate to maintain the margins that it expected                          | 13:03:06 | 18      | MR. LAHAD: Lack foundation, calls for            | 13:06:30 |
| 19      | receive at the original price point?  | 13:03:08 | 19      | speculation, the document speaks for itself.     | 13:06:31 |
| 20      | A I would restate that our primary concern                                  | 13:03:12 | 20      | THE WITNESS: Right, it wasn't a term             | 13:06:34 |
| 21      | is the cost of the product and our secondary                                | 13:03:17 | 21      | that I used in my day-to-day business and my     | 13:06:39 |
| 22      | concern is what we can sell it at and the                                   | 13:03:22 | 22      | only read would be what I believe the word       | 13:06:43 |
| 23      | manufacturer's suggested retail price definitely                            | 13:03:25 | 23      | benchmark means.                                 | 13:06:48 |
| 24      | impacts our ability of what we can sell it at, but                          | 13:03:28 | 24      | BY MS. LIN:                                      | 13:06:49 |
| 25      | we still have the right to sell it at any price we                          | 13:03:32 | 25      | Q Aside from Exhibit 2835, are you               | 13:06:49 |

19 (Pages 70 - 73)

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1 familiar with people at Circuit City using the 13:06:53  
2 term benchmark in reference to pricing? 13:06:56  
3 A I have not heard the term, but it is an 13:07:02  
4 adjective, I am sure that they did. 13:07:05  
5 (Whereupon, Deposition Exhibit 2836 is marked for 13:07:09  
6 identification.) 13:07:09  
7 MS. LIN: I am going to mark document 13:07:18  
8 Dates Number CC 0567286 as Exhibit 2836. 13:07:20  
9 BY MS. LIN: 13:07:29  
10 Q Are you familiar with any of the people 13:07:40  
11 in Exhibit 2836? 13:07:42  
12 A Yes. 13:07:45  
13 Q Who are you familiar with? 13:07:45  
14 A Andy Mintz and David Dowdy. 13:07:47  
15 Q I think you mentioned David Dowdy 13:07:52  
16 earlier. What was his position at Circuit City? 13:07:53  
17 A He was a buyer. 13:07:56  
18 Q Of CRT finished products? 13:07:57  
19 A I know that he worked on the TV team, so 13:07:59  
20 I do not know specifically whether he bought CRT 13:08:04  
21 product. 13:08:07  
22 Q Who is Andy Mintz? 13:08:08  
23 A Andy Mintz worked for Phillips 13:08:09  
24 Corporation. 13:08:13  
25 Q I am directing your attention to the 13:08:17

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1 middle of the first page in David Dowdy's email. 13:08:18  
2 Do you see where it says, "If this model is 13:08:22  
3 impacted and you would need to raise the \$315 cost 13:08:25  
4 to offset any increase in duty we won't buy it?" 13:08:29  
5 A Here you go. Yes. 13:08:35  
6 Q In negotiating the purchase of a CRT 13:08:46  
7 finished product, was David Dowdy threatening not 13:08:54  
8 to buy the product if Phillips could not meet 13:09:00  
9 Circuit City's requested price? 13:09:01  
10 MR. LAHAD: Lacks foundation, calls for 13:09:06  
11 speculation. 13:09:07  
12 THE WITNESS: He says, "I can get this 13:09:09  
13 model out of town for the same price. I 13:09:10  
14 won't pay anymore for it. The same thing 13:09:12  
15 goes for the 27-inch TV, so if you won't pay 13:09:16  
16 anything more for it what would he do?" I 13:09:19  
17 would assume that he would not buy it. 13:09:22  
18 BY MS. LIN: 13:09:26  
19 Q At the top of the page, do you see where 13:09:28  
20 it says, "Andy Mintz says, 'I am sure you will be 13:09:30  
21 covered on both models'"? 13:09:32  
22 A Yes. 13:09:34  
23 Q Do you understand what it would mean to 13:09:36  
24 be covered on a model of a CRT finished product? 13:09:37  
25 MR. LAHAD: Lack foundation, calls for 13:09:40

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1 speculation. 13:09:44  
2 THE WITNESS: I can only speculate. 13:09:45  
3 BY MS. LIN: 13:09:47  
4 Q Outside of the context of this exhibit, 13:09:48  
5 are you familiar with anyone talking about the 13:09:49  
6 covering of a model's price in the CRT finished 13:09:52  
7 product context? 13:09:56  
8 A I am familiar with the term of are we 13:10:05  
9 going to be covered in the changes that we have 13:10:13  
10 requested and that may be what this is in response 13:10:17  
11 to. 13:10:23  
12 Q To the extent that you are familiar with 13:10:24  
13 the term of being covered in the changes that 13:10:26  
14 Circuit City requested, what would that mean? 13:10:28  
15 A It could be anything that we requested 13:10:31  
16 from a vendor, if they said, "We have you 13:10:34  
17 covered," and that would imply that they are going 13:10:37  
18 to do what you have asked them to do. 13:10:40  
19 Q Would you be covered to the extent of 13:10:48  
20 maintaining your margin that you originally 13:10:50  
21 negotiated on the product, is that what being 13:10:53  
22 covered means? 13:10:55  
23 MR. LAHAD: Objection, misstates the 13:10:57  
24 testimony. 13:10:58  
25 THE WITNESS: It would be whatever it 13:11:00

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1 was that we had requested. 13:11:02  
2 BY MS. LIN: 13:11:03  
3 Q How often did Circuit City's CRT 13:11:21  
4 finished product purchasing prices change? 13:11:24  
5 MR. LAHAD: You said purchasing prices? 13:11:28  
6 MS. LIN: Sorry, strike that. 13:11:30  
7 BY MS. LIN: 13:11:30  
8 Q How often did Circuit City's CRT 13:11:31  
9 purchasing costs change? 13:11:34  
10 A I don't know. 13:11:38  
11 MR. GRALEWSKI: Objection. 13:11:39  
12 THE WITNESS: Yes, I don't know how to 13:11:40  
13 answer that question. There are lots of 13:11:41  
14 different products, so are you talking about 13:11:44  
15 a specific one product how often would its 13:11:48  
16 price change? 13:11:51  
17 BY MS. LIN: 13:11:53  
18 Q How often would a particular CRT 13:11:53  
19 finished product cost Circuit City to change, 13:11:55  
20 would that be on a bi-annual basis like we were 13:11:58  
21 discussing before or might it have happened more 13:12:00  
22 frequently? 13:12:02  
23 A It could happen once -- 13:12:02  
24 MR. GRALEWSKI: Objection. 13:12:04  
25 THE WITNESS: It can happen as little 13:12:05

20 (Pages 74 - 77)



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1 us -- I have bought products that had the 13:12:11  
2 same costs two years in a row. 13:12:14  
3 So it could happen that it didn't 13:12:17  
4 change for a long period of time, but in 13:12:19  
5 general those costs were sort of reviewed on 13:12:26  
6 that semi-annual basis based on sales. 13:12:28  
7 BY MS. LIN: 13:12:34  
8 Q Were Circuit City's prices for a CRT 13:12:34  
9 finished product reviewed more frequently if other 13:12:38  
10 vendors were changing their prices of CRT finished 13:12:42  
11 products? 13:12:44  
12 MR. LAHAD: You said prices again. 13:12:47  
13 MS. LIN: Sorry. 13:12:48  
14 MR. LAHAD: I just want to make sure we 13:12:51  
15 are on the same page is why I am doing it. 13:12:51  
16 MS. LIN: No, I completely understand. 13:12:53  
17 Strike that. 13:12:54  
18 BY MS. LIN: 13:12:56  
19 Q Were Circuit City's costs for CRT 13:12:56  
20 finished products ever negotiated more frequently 13:12:56  
21 than bi-annually based on vendors of other CRT 13:13:00  
22 finished products changing their costs to Circuit 13:13:03  
23 City? 13:13:06  
24 A Yes. 13:13:06  
25 Q When one CRT finished product vendor 13:13:09

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1 changed its cost, would Circuit City then 13:13:13  
2 typically renegotiate its cost on similar products 13:13:17  
3 with other CRT finished product vendors? 13:13:20  
4 A It depended on what kind of impact it 13:13:24  
5 had. If the cost change was significant, and that 13:13:27  
6 meant that you were going to change your retail 13:13:31  
7 price, then you could have that discussion that 13:13:34  
8 says, again, with public information, I am priced 13:13:37  
9 on my floor every day at \$399 on your competitor, 13:13:42  
10 and your product is \$449, so you're not selling 13:13:44  
11 any, you would have those kind of discussions. 13:13:52  
12 But the reverse of that could also 13:13:55  
13 happen where you have got a lower cost and you are 13:13:58  
14 now making more money and that is all you want to 13:13:59  
15 do is make more money. 13:14:02  
16 Q Are you familiar with CRT finished 13:14:06  
17 product costs to Circuit City ever going up? 13:14:07  
18 A Yes. Well, I can't say that it is a CRT 13:14:12  
19 product that I have seen go up, but product prices 13:14:20  
20 do go up occasionally. 13:14:27  
21 MR. LAHAD: Again, you used prices. Do 13:14:31  
22 you mean prices or cost? 13:14:33  
23 THE WITNESS: Cost. Circuit City's cost 13:14:34  
24 on a product, speaking specifically of CRT, I 13:14:37  
25 do not know of a specific case, but products 13:14:44

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1 occasionally do have an increase in cost. 13:14:48  
2 BY MS. LIN. 13:14:52  
3 Q During the relevant period, did Circuit 13:14:53  
4 City's costs for CRT finished products go down 13:14:56  
5 more frequently than they went up? 13:15:00  
6 A I would speculate that they would over a 13:15:05  
7 period of time and that consumer electronics in 13:15:11  
8 general have one price at introduction when they 13:15:16  
9 are not selling very many, and then over a period 13:15:19  
10 of time when they are selling a lot more, the 13:15:21  
11 costs go down to manufacture and then the costs 13:15:23  
12 are transferred to Circuit City Stores. 13:15:28  
13 The life cycle of CRT, I don't know the 13:15:33  
14 specifics, my guess would be that they leveled 13:15:39  
15 out, but again that is a guess. 13:15:45  
16 Q When you talk about a life cycle of CRT, 13:15:48  
17 what does that mean? 13:15:50  
18 A From television. When television was 13:15:53  
19 invented to the time that people basically stopped 13:15:56  
20 selling CRT product. 13:15:59  
21 Q Was there a consistent life cycle of a 13:16:01  
22 particular CRT finished product? 13:16:03  
23 A Most individual SKUs or branded models 13:16:06  
24 would be replaced on an annual basis. Sometimes 13:16:13  
25 they would continue over, but for a specific 13:16:17

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1 model, the typical life cycle was a year. 13:16:23  
2 Q Are you familiar with the term price 13:16:35  
3 protection? 13:16:37  
4 A Yes. 13:16:37  
5 Q What is price protection? 13:16:38  
6 A Price protection is when the vendor 13:16:41  
7 agrees to reduce the cost of your product and all 13:16:47  
8 the product that you already own and it is usually 13:16:52  
9 from a specific date. 13:16:58  
10 Q Did Circuit City negotiate price 13:17:04  
11 protection as part of its CRT finished product 13:17:07  
12 purchases? 13:17:11  
13 MR. LAHAD: Objection, vague. 13:17:12  
14 THE WITNESS: Circuit City requested 13:17:17  
15 price protection when we built programs 13:17:20  
16 because without it Circuit City is at risk of 13:17:26  
17 owning a whole lot of inventory that is not 13:17:31  
18 valuable, so the short answer is yes. 13:17:35  
19 BY MS. LIN: 13:17:40  
20 Q When you say Circuit City built 13:17:41  
21 programs, what does that mean? 13:17:42  
22 A That is our assortment. Another word 13:17:44  
23 for assortment. 13:17:47  
24 Q Did Circuit City tend to have price 13:17:53  
25 protection in place on all of its CRT finished 13:17:56

21 (Pages 78 - 81)

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1 product purchasing agreements? 13:17:59  
2 A No. 13:18:00  
3 Q What would determine whether Circuit 13:18:01  
4 City had a price protection agreement with a CRT 13:18:03  
5 finished product vendor? 13:18:06  
6 A It was a negotiated process. Sometimes 13:18:09  
7 it would be in a master agreement. Sometimes it 13:18:15  
8 would be in a specific deal letter for an item. 13:18:17  
9 but over this time period my experience is that we 13:18:23  
10 got less and less price protection as a standard 13:18:28  
11 rule of thumb and more sell through funding 13:18:32  
12 instead. 13:18:37  
13 Q Were there specific CRT finished product 13:18:42  
14 vendors that did not provide price protection? 13:18:45  
15 A I am sure there were, but I do not know 13:18:48  
16 them. 13:18:51  
17 Q Are there specific CRT finished product 13:18:51  
18 vendors to your knowledge that did provide price 13:18:54  
19 protection consistently? 13:18:58  
20 A Again, my personal experience for CRT 13:19:01  
21 product was limited to the combos and it was my 13:19:04  
22 recollection that typically Magnavox provided 13:19:12  
23 price protection. 13:19:17  
24 MR. LAHAD: You said Magnavox? 13:19:20  
25 THE WITNESS: Magnavox, yes. 13:19:21

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1 BY MS. LIN: 13:19:21  
2 Q You mentioned sell through credits. 13:19:22  
3 What are sell through credits? 13:19:22  
4 A Sell through credits. That is an amount 13:19:24  
5 of money provided to Circuit City based on the 13:19:27  
6 sale of a specific product for a specific period 13:19:30  
7 of time during a specific set of time. 13:19:33  
8 Q How would the amount of a sell through 13:19:37  
9 credit be determined? 13:19:39  
10 A It would be determined by the vendor. 13:19:41  
11 Q Would the amount of the sell through 13:19:52  
12 credit be tied to something? 13:19:54  
13 A The amount of it? I'm not sure I know 13:19:58  
14 what you're asking. 13:20:06  
15 Q I'm not sure I am understanding you. In 13:20:06  
16 setting a sell through credit, was that typically 13:20:11  
17 a percentage of a sale price or tied to a former 13:20:14  
18 advertised price, how would that term come to be 13:20:18  
19 agreed upon? 13:20:21  
20 A It would be a discussion based on what 13:20:23  
21 it would take to make a sales increase and since 13:20:26  
22 we set our own pricing, the vendor could offer a 13:20:33  
23 sell through bonus and say, "You are going to make 13:20:41  
24 \$10 more, \$15 more, \$20 more for all the ones that 13:20:45  
25 you sell during this period of time. 13:20:50

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1 "If I gave you that, what do you think 13:20:55  
2 it is going to do?" 13:20:59  
3 And the buyer might say, "If you are 13:21:00  
4 going to do that, then I might advertise it." 13:21:02  
5 He might say, "I think I can get the 13:21:07  
6 sales up and not talk about anything else." 13:21:13  
7 But the whole idea is that during Point 13:21:17  
8 A to Point B, you have got more money to do 13:21:21  
9 something that might help the sales. 13:21:24  
10 The things that the buyer can do is he 13:21:27  
11 can reduce the price on the floor. He can 13:21:29  
12 advertise the product. He can tell the sales 13:21:32  
13 people, "This is a product that we are going to 13:21:34  
14 have lots of and be sure to be aware of it or 13:21:37  
15 train on it," but the two biggest levers are price 13:21:42  
16 and advertising. 13:21:48  
17 Q Would sell through credits be 13:21:50  
18 implemented when a CRT finished product would be 13:21:52  
19 sold by Circuit City below the price at which 13:21:55  
20 Circuit City originally intended to sell the 13:22:01  
21 product? 13:22:03  
22 MR. LAHAD: Objection, lacks foundation. 13:22:04  
23 THE WITNESS: I am cautious about any 13:22:08  
24 conversations about what we tend to sell. I 13:22:10  
25 mean as a rule we typically sold product at 13:22:12

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1 manufacturer's suggested retail price. 13:22:17  
2 If we had a sell through credit we may 13:22:22  
3 choose to sell below that to be able to sell 13:22:26  
4 faster during that period of time. 13:22:31  
5 BY MS. LIN: 13:22:33  
6 Q Were sell through credits typically 13:22:36  
7 implemented when a manufacturer's suggested retail 13:22:46  
8 price had been lowered? 13:22:48  
9 A Generally, if a manufacturer's suggested 13:22:51  
10 retail price has been lowered you're asking for 13:22:55  
11 price protection, but instead of price protection, 13:22:59  
12 you might get sell through credit for the 13:23:05  
13 remaining inventory that you have for a period of 13:23:09  
14 time or something of that nature. 13:23:13  
15 Q Did Circuit City typically negotiate 13:23:19  
16 sell through credits at the time it negotiated to 13:23:21  
17 purchase the CRT products? 13:23:24  
18 A No. 13:23:27  
19 Q Was price protection typically 13:23:31  
20 negotiated at the time you purchased the CRT 13:23:32  
21 products? 13:23:35  
22 A Yes. 13:23:35  
23 Q Was price protection ever negotiated 13:23:36  
24 after the point in time at which you had already 13:23:39  
25 purchased the CRT finished products? 13:23:41

22 (Pages 82 - 85)

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1 A Yes. 13:23:43  
2 Q Was one of those points in time for 13:23:49  
3 price protection more common than the other, that 13:23:51  
4 is, during the initial negotiations versus once 13:23:54  
5 you already owned the products? 13:23:57  
6 A Again, it changed over the years. I 13:23:59  
7 would say like the 1990s of this period there was 13:24:02  
8 a lot of master agreements that included price 13:24:05  
9 protection if something that vendor agreed would 13:24:09  
10 occur every time that they changed, they 13:24:13  
11 repositioned their product, their manufacturer's 13:24:20  
12 suggested price or their costing that we would be 13:24:22  
13 protected on that at that time. 13:24:26  
14 The latter part of this period that 13:24:27  
15 we're talking about, that was a lot less likely, 13:24:29  
16 so because of that, you would end up asking for 13:24:32  
17 that sort of price protection on a more one on one 13:24:37  
18 type basis, and say similar to the sample here or 13:24:41  
19 I think when a sample is given someone else is now 13:24:47  
20 lower than you, and your product is not selling. 13:24:54  
21 All the conversations go back to what is 13:24:59  
22 selling, so if you want to know when did you talk 13:25:00  
23 about sell through credits, it's when the product 13:25:04  
24 stops selling. 13:25:07  
25 If you bought a whole bunch of it and it 13:25:08

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1 is not selling, then you're going to talk about 13:25:10  
2 sell through credits or anything else you can do 13:25:12  
3 to get it to sell. 13:25:14  
4 If it's selling you are not having those 13:25:16  
5 conversations. 13:25:19  
6 Q When you're talking about price 13:25:23  
7 protection protecting Circuit City, what does that 13:25:25  
8 mean in terms of were you protecting Circuit 13:25:28  
9 City's expected revenue or were you protecting 13:25:31  
10 margin? What was that protection? 13:25:35  
11 A You are protecting Circuit City's 13:25:36  
12 profitability because if we own product that costs 13:25:39  
13 more than what we paid for it, then we can 13:25:43  
14 actually be losing money, so I guess that is the 13:25:46  
15 simplest answer. We are protecting our 13:25:52  
16 profitability. 13:25:56  
17 Q When price protection was included in 13:25:58  
18 your vendor agreements, do you know how Circuit 13:26:01  
19 City was protecting its profitability? 13:26:04  
20 MR. LAHAD: Objection, vague. 13:26:08  
21 THE WITNESS: No. Price protection 13:26:09  
22 would say that if the cost moves, then all of 13:26:13  
23 the product that you own will be reduced to 13:26:19  
24 the new cost and therefore we would not own 13:26:24  
25 product that wasn't as competitive. 13:26:28

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1 BY MS. LIN: 13:26:31  
2 Q Did Circuit City negotiate the terms of 13:26:34  
3 how CRT finished products would be delivered to 13:26:38  
4 Circuit City as part of its purchase negotiations? 13:26:40  
5 A Yes. 13:26:48  
6 Q In negotiating delivery terms with CRT 13:26:52  
7 finished product vendors, did Circuit City 13:26:56  
8 sometimes negotiate that the vendors would pay to 13:26:59  
9 deliver the CRT finished products to Circuit City? 13:27:01  
10 A Yes. 13:27:03  
11 Q Do you know if CRT finished products 13:27:04  
12 were ever shipped to Circuit City from outside of 13:27:09  
13 the United States? 13:27:11  
14 A They had to have been, so yes. 13:27:13  
15 Q Were CRT finished products ever shipped 13:27:18  
16 to Circuit City from within the United States? 13:27:21  
17 A Yes. 13:27:23  
18 Q Do you know how you would distinguish 13:27:26  
19 which products were shipped to Circuit City from 13:27:30  
20 within the United States versus from abroad? 13:27:33  
21 A No. 13:27:35  
22 Q Did Circuit City's delivering 13:27:38  
23 negotiations consider where a product would be 13:27:44  
24 shipped from in negotiating the terms of delivery? 13:27:50  
25 A We would negotiate in some cases for our 13:27:54

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*trucks*  
1 own ~~trucks~~ to do part of the delivery, so yes. 13:28:00  
2 Q Did Circuit City ever negotiate volume 13:28:12  
3 discounts as part of its purchase negotiations? 13:28:15  
4 A Yes. 13:28:17  
5 Q How were volume discounts negotiated? 13:28:18  
6 A You would negotiate saying, "That if I 13:28:22  
7 bought X amount of product either all at once or 13:28:26  
8 over a period of time, then I want a better 13:28:31  
9 price," and you might have several goals. 13:28:35  
10 "If I sell this amount, I get it at this 13:28:40  
11 cost. If I sell at that point, I get this cost." 13:28:43  
12 Q Did Circuit City ever negotiate the 13:28:51  
13 receipt of market development funds as part of the 13:28:53  
14 CRT finished product negotiating? 13:28:55  
15 A Yes. 13:28:57  
16 Q How were those funds negotiated for? 13:28:58  
17 A I don't know what you're asking. 13:29:10  
18 Q How did Circuit City select the amount 13:29:12  
19 of market development funds it would seek from CRT 13:29:14  
20 finished product vendors? 13:29:17  
21 A It would start with history. What had 13:29:19  
22 you been getting from this particular vendor to 13:29:23  
23 keep the marketplace going? 13:29:26  
24 You would compare them to how much of 13:29:29  
25 your business ~~is it~~ are you going to increase 13:29:34

23 (Pages 86 - 89)

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1 their business, or are you decreasing it? 13:29:38  
2 If I was talking to LG, and said, "Last 13:29:41  
3 year I bought 10,000 pieces from you. This year I 13:29:45  
4 am going to buy 100,000 pieces. Last year you 13:29:48  
5 gave me \$2,000 worth MDF. Those 100,000 pieces is 13:29:51  
6 a significant part my business, so therefore I 13:29:57  
7 need this amount of MDF." 13:30:00  
8 Q Did Circuit City consistently receive 13:30:10  
9 MDF funds from its CRT finished product vendors? 13:30:13  
10 A Yes. 13:30:17  
11 Q Did Circuit City negotiate the amount of 13:30:21  
12 floor space that specific CRT finished product 13:30:24  
13 vendors products would receive on Circuit City's 13:30:27  
14 floors? 13:30:29  
15 MR. LAHAD: Vague. 13:30:31  
16 THE WITNESS: Yes, because we negotiated 13:30:38  
17 how many SKUs or models we were going to 13:30:44  
18 carry, therefore that becomes floor space. 13:30:48  
19 but we did not do it the way you are saying 13:30:53  
20 it. 13:30:56  
21 We did not say, "We will give you 15 13:30:57  
22 feet of space for X amount dollars." It 13:31:00  
23 would be much more about, "We carried four 13:31:04  
24 SKUs from you last year, and we only plan on 13:31:08  
25 carrying three from you this year." I will 13:31:11

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1 use models. That is probably the easiest 13:31:21  
2 way. 13:31:24  
3 BY MS. LIN: 13:31:24  
4 Q I'm not clear on your last answer. In 13:31:26  
5 negotiating the number of models Circuit City 13:31:27  
6 would be purchasing, was that one collective 13:31:31  
7 negotiation purchase those models together or what 13:31:34  
8 did you mean? 13:31:36  
9 A Because usually the products all 13:31:37  
10 transitioned at the same time. Instead of having 13:31:41  
11 negotiated about a single product you were 13:31:45  
12 generally talking about all the products that were 13:31:49  
13 changing for that time period and the vendor would 13:31:52  
14 show you 12 products knowing that you never bought 13:31:57  
15 more than three. 13:32:03  
16 The vendor is trying to, of course, get 13:32:06  
17 you to buy more products, and as a buyer you want 13:32:08  
18 to buy as few as you need and not one more. So 13:32:12  
19 that was the negotiation. 13:32:18  
20 Q When Circuit City was negotiating its 13:32:24  
21 costs on CRT finished products, was it typically 13:32:27  
22 negotiating the costs for multiple products from 13:32:29  
23 one vendor at the same time? 13:32:32  
24 A Yes. 13:32:34  
25 Q Would a cost deal on one of those 13:32:34

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1 products ever leave Circuit City to pay more for 13:32:37  
2 another product from that same CRT finished 13:32:41  
3 product vendor? 13:32:43  
4 A Yes. 13:32:44  
5 Q Other than the non-priced terms we have 13:32:48  
6 just been discussing like MDF funds and price 13:32:51  
7 protection, are there other terms that were 13:32:54  
8 important to Circuit City in its negotiating for 13:32:56  
9 CRT finished product purchases? 13:32:59  
10 A Other than costs and MDF, is that what 13:33:03  
11 you're asking? 13:33:11  
12 Q And sell through credit and volume 13:33:13  
13 discounts and selling? 13:33:16  
14 A Right, so the way the buyers looked at 13:33:18  
15 it was that there was a cost that was going to go 13:33:22  
16 into the system that you bought it and that was it 13:33:26  
17 and is that going to basically work overall? 13:33:30  
18 Then you also had all of these other 13:33:35  
19 funds that were market development funds, whether 13:33:38  
20 they be sell through. 13:33:43  
21 Volume discounts, typically, went 13:33:47  
22 directly into costs because, again, they are 13:33:50  
23 calculated, and so on, but if it was a sell 13:33:53  
24 through credit, if it was to fund a rebate, if it 13:33:56  
25 was to fund a display, things like that, those all 13:34:01

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1 would be considered MDF for the buyer. 13:34:08  
2 You will see documents. You 13:34:14  
3 probably already have. CES-II is what we refer to 13:34:17  
4 as those MDF funds. CES, consumer electronic show 13:34:22  
5 Roman numeral 2. 13:34:24  
6 Like we had a CES-I markup that you saw 13:34:33  
7 earlier and we had a CES-II which was where the 13:34:38  
8 marketing funds went into for the all of these 13:34:43  
9 type of activities. 13:34:49  
10 Q So to clarify. What types of funds 13:34:52  
11 would be included in that CES-II category? 13:34:54  
12 A Anything that was provided by the vendor 13:34:57  
13 that did not go directly into the costs of the 13:35:00  
14 goods. 13:35:04  
15 Q Would you list those funds out for me? 13:35:08  
16 A Sell through credits were typically not 13:35:11  
17 included in the cost. Support for rebates. 13:35:19  
18 Supports for ads. Support for displays. Support 13:35:25  
19 for training. Those are the biggies. 13:35:30  
20 Q And those are all forms of support that 13:35:37  
21 Circuit City received from CRT manufacturing 13:35:39  
22 vendors? 13:35:42  
23 MR. LAHAD: Misstates the testimony. 13:35:44  
24 THE WITNESS: We received it from CRT 13:35:46  
25 manufacturers, certainly. 13:35:50

24 (Pages 90 - 93)

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1 BY MS. LIN: 13:35:54  
2 Q Are you familiar with the term spiff? 13:35:56  
3 A Yes. 13:35:58  
4 Q What is that? 13:35:58  
5 A It's a specific commission for a 13:36:00  
6 specific product. 13:36:04  
7 Q Did Circuit City's sales employees 13:36:07  
8 receive commissions other than spiffs? 13:36:12  
9 A Yes. 13:36:14  
10 Q Folks on the spiff first, how did spiff 13:36:18  
11 payments work? 13:36:20  
12 A Let me restate earlier. Our sales 13:36:22  
13 floors changed from commission to non-commission 13:36:26  
14 during this period of time. 13:36:29  
15 I don't know the exact date, but again, 13:36:31  
16 it is probably around 2000 there was no 13:36:37  
17 commission. 13:36:41  
18 Q So salespeople received commission at 13:36:42  
19 Circuit City prior to approximately 2000 and then 13:36:45  
20 no longer did after that? 13:36:47  
21 A Right, and it may have been as late as 13:36:49  
22 2002. I cannot quote that, but when they received 13:36:53  
23 commissions they received a set percentage of the 13:36:59  
24 retail price of the product as a commission and 13:37:05  
25 they may or may not also receive a spiff. 13:37:09

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1 Q After Circuit City abolished its 13:37:14  
2 commissions around 2000, or 2002, did Circuit City 13:37:17  
3 sales associates continue to receive spiffs? 13:37:22  
4 A No. 13:37:24  
5 Q Were spiff payments something that was 13:37:27  
6 negotiated with CRT finished product vendors? 13:37:29  
7 A No. 13:37:32  
8 Q How were spiffs determined? 13:37:33  
9 A Spiffs are directive, meaning, that you 13:37:40  
10 are using them to encourage the sale of that 13:37:44  
11 specific product, so they could be determined 13:37:48  
12 because you have an excess inventory. 13:37:52  
13 They could be determined because it 13:37:55  
14 supports your sales strategy or they could be 13:37:58  
15 there because the product is highly profitable. 13:38:03  
16 Q Were spiffs ever funded by CRT finished 13:38:10  
17 product vendors? 13:38:13  
18 A During the time period we are talking 13:38:14  
19 about, I don't know of any cases. 13:38:16  
20 When I first became a buyer, I saw some 13:38:19  
21 documents that said, "We will fund a spiff for you 13:38:23  
22 during a certain period of time and what have 13:38:29  
23 you," and I don't know if -- I doubt that it was 13:38:32  
24 CRT product because combo product was not even 13:38:34  
25 introduced at that time, so I wouldn't think so. 13:38:38

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1 MR. GRALEWSKI: When it is convenient, 13:38:47  
2 can we take a very short break. I don't want 13:38:47  
3 to interrupt your questioning. 13:38:51  
4 MS. LIN: I think we have a little bit 13:38:53  
5 longer to go. 13:38:55  
6 BY MS. LIN: 13:38:57  
7 Q Would Circuit City ever request non-cost 13:38:58  
8 terms such as additional MDF funds in lieu of a 13:39:01  
9 cost decrease on a CRT finished product purchase? 13:39:03  
10 A Because the buyers is first and foremost 13:39:08  
11 rated on the profitability of the product based on 13:39:17  
12 store costs, that would be an unusual activity for 13:39:21  
13 long term type of things. 13:39:32  
14 But as we talked about for sell through 13:39:35  
15 credit in effect that's what you're doing, is 13:39:39  
16 you're getting some dollars to help you sell it 13:39:41  
17 for a little bit of time. 13:39:45  
18 It is not really reducing the cost, but 13:39:47  
19 it is sort of paying for you to take an action 13:39:51  
20 like buying an ad. 13:39:57  
21 Q Sell through credits could be used to 13:39:59  
22 reduce Circuit City's sort of actual costs even if 13:40:01  
23 they did not decrease its accounted for cost of a 13:40:06  
24 CRT finished product? 13:40:09  
25 MR. LAHAD: Misstates the testimony. 13:40:11

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1 THE WITNESS: Yes, I don't know what you 13:40:12  
2 mean by actual costs. 13:40:14  
3 BY MS. LIN: 13:40:15  
4 Q A sell through credit could decrease 13:40:18  
5 Circuit City's overall costs of a CRT finished 13:40:21  
6 product without decreasing costs as accounted for 13:40:24  
7 in Circuit City's transactional data? 13:40:27  
8 MR. LAHAD: Same objection. 13:40:30  
9 THE WITNESS: Yes, the costs of the 13:40:31  
10 product as we looked at it was the costs that 13:40:36  
11 we paid for the product and MDF was evaluated 13:40:40  
12 as a separate line. 13:40:47  
13 So we would look at, "Are we delivering 13:40:52  
14 the margins and are we delivering the MDF 13:40:56  
15 that our budgets have put out there?" 13:40:59  
16 MS. LIN: Why don't we go ahead and take 13:41:03  
17 a short break and go off the record. 13:41:04  
18 THE VIDEOGRAPHER: The time is 1:41 p.m. 13:41:04  
19 We are off the record. (Whereupon, a break 13:41:07  
20 in the proceedings commenced at 1:41 p.m. and 13:41:10  
21 on resuming at 1:48 p.m.) 13:41:10  
22 THE VIDEOGRAPHER: Time is approximately 13:48:36  
23 1:48 p.m. We are back on the record. 13:48:39  
24 BY MS. LIN: 13:48:42  
25 Q Thank you, Mr. Deason. Did Circuit City 13:48:43

25 (Pages 94 - 97)

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1 have a vendor qualification process that it used 13:48:45  
2 for vendors of CRT finished products? 13:48:47  
3 A We created a vendor management group in 13:48:52  
4 approximately 2004, if my memory is correct, that 13:48:55  
5 created a score card of things that we cared 13:49:07  
6 about, and in that process we issued saying, "We 13:49:12  
7 want all of our vendors to do this." 13:49:17  
8 Did they all do it? No. 13:49:20  
9 Q Was that a qualification process in the 13:49:24  
10 sense that Circuit City refused to purchase from 13:49:26  
11 certain vendors that would meet specified terms? 13:49:29  
12 MR. LAIAD: Objection, vague. 13:49:36  
13 THE WITNESS: As you asked earlier about 13:49:38  
14 would you buy a product that had 60-day terms 13:49:45  
15 versus another one that had 30-day terms, it 13:49:53  
16 would certainly be a factor, it may be a tie 13:49:55  
17 breaker, but it wasn't cut and dry the way 13:50:02  
18 you say, "If you do not do this, I am not 13:50:05  
19 buying from you at all." 13:50:07  
20 It would be considered with all the 13:50:09  
21 other factors including the fact of, "Do you 13:50:10  
22 have to have the product?" 13:50:13  
23 BY MS. LIN: 13:50:14  
24 Q That's a good one to start with. 13:50:14  
25 A Right. I mean, if you've got to have 13:50:16

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1 Panasonic, then you have got to have Panasonic. 13:50:17  
2 Q Prior to the program you were just 13:50:21  
3 discussing that was implemented in 2004, was there 13:50:22  
4 any kind of vendor qualification process used by 13:50:25  
5 Circuit City for CRT finished product purchases? 13:50:28  
6 A Overall, there was sort of a boilerplate 13:50:31  
7 of vendor agreements, master agreements that would 13:50:36  
8 say we expect not to be held liable in case of an 13:50:42  
9 accident, indemnification that we are going to get 13:50:49  
10 X amount of terms, that we're going to get this, 13:50:54  
11 and this, and this, but there wasn't a "set in 13:50:55  
12 stone" type of process as far as this is what we 13:51:03  
13 expect from everybody. 13:51:07  
14 Q Did Circuit City have a master agreement 13:51:09  
15 in place with every vendor from which it purchased 13:51:11  
16 CRT finished products? 13:51:15  
17 A No. 13:51:17  
18 Q Are there any factors that distinguished 13:51:19  
19 when Circuit City would purchase CRT finished 13:51:22  
20 products without a master agreement in place? 13:51:27  
21 A If the vendor refused to sign one and 13:51:31  
22 you still needed to carry the product and the 13:51:35  
23 other would be a lazy buyer. 13:51:39  
24 Q Are you aware of any instances in which 13:51:42  
25 a finished product vendor refused to sign Circuit 13:51:45

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1 City's master agreement? 13:51:48  
2 A A CRT vendor? 13:51:50  
3 Q Yes. 13:51:52  
4 A I do not. 13:51:52  
5 Q During the relevant period, did Circuit 13:51:57  
6 City have any preferred suppliers of CRT finished 13:52:00  
7 products? 13:52:03  
8 A No. 13:52:04  
9 Q Are you familiar with Circuit City 13:52:10  
10 having sheltered brands of CRT products? 13:52:12  
11 A Yes. 13:52:15  
12 Q What were sheltered brands? 13:52:17  
13 A Brands that were not distributed as 13:52:19  
14 widely. 13:52:22  
15 Q What determined whether a brand would be 13:52:24  
16 a sheltered brand? 13:52:31  
17 A I just answered that. It is the 13:52:34  
18 definition of it. If it is not carried, but in a 13:52:37  
19 few locations, or in very limited locations, that 13:52:44  
20 is the definition of it being sheltered. There 13:52:48  
21 are not very many other people that you have to 13:52:50  
22 compete with. 13:52:53  
23 Q A sheltered brand would not be carried 13:52:55  
24 at many locations outside of Circuit City? 13:52:57  
25 A Correct. 13:52:59

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1 Q Do you recall any specific CRT finished 13:53:00  
2 products that were sheltered? 13:53:06  
3 A Vendors sold their products. They would 13:53:13  
4 change whether they would distribute or how they 13:53:17  
5 distributed their products. 13:53:21  
6 At one point a brand might be sheltered 13:53:23  
7 and then at another point it may not be sheltered 13:53:27  
8 because the majority of it happened before this 13:53:33  
9 case started, and I will use Mitsubishi as an 13:53:37  
10 example. 13:53:40  
11 Mitsubishi originally sold only to 13:53:41  
12 consumer electronic stores and that had commission 13:53:43  
13 sales forces and at some point they decided that 13:53:48  
14 it didn't have to have commission sales forces 13:53:52  
15 anymore. 13:53:55  
16 Q Did Circuit City maintain sheltered 13:53:57  
17 brands of CRT finished products for off the 13:54:00  
18 relevant period? 13:54:04  
19 A Circuit City could not determine. They 13:54:06  
20 cannot determine whether it is sheltered or not. 13:54:10  
21 The vendor makes those decisions. 13:54:13  
22 If it is a sheltered product, then it is 13:54:15  
23 desirable to Circuit City, so to the degree that 13:54:19  
24 products were sheltered, Circuit City would 13:54:22  
25 actively pursue those brands. 13:54:28

26 (Pages 98 - 101)

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1 Q Why did Circuit City find it desirable 13:54:30  
 2 to have sheltered products? 13:54:32  
 3 A Because it is less competition. It's a 13:54:34  
 4 product that the customer can only buy from you, 13:54:37  
 5 and in some cases, only you and in some cases 13:54:41  
 6 maybe two or three places as opposed to 1,000. 13:54:44  
 7 Q How many sheltered products would 13:54:51  
 8 Circuit City tend to have at a time in the CRT 13:54:54  
 9 finished products sort of species? 13:54:56  
 10 MR. LAHAD: Products or brand? 13:55:00  
 11 MS. LIN: Products, 13:55:01  
 12 THE WITNESS: I don't know. 13:55:02  
 13 BY MS. LIN: 13:55:03  
 14 Q Do you know how many sheltered brands 13:55:03  
 15 Circuit City would tend to have at a time in the 13:55:05  
 16 CRT finished product context? 13:55:11  
 17 A No. 13:55:13  
 18 Q Were Circuit City's purchase 13:55:14  
 19 negotiations for CRT finished products ever 13:55:21  
 20 affected by the individual buyers relationships 13:55:25  
 21 with vendor representatives? 13:55:28  
 22 MR. LAHAD: Objection, vague. 13:55:30  
 23 THE WITNESS: I wouldn't say influenced 13:55:34  
 24 by their relationship to a single person, but 13:55:40  
 25 the relationship to the company 13:55:46

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1 If XYZ company is a company that 13:55:50  
 2 usually does what they say they are going to 13:55:54  
 3 do, then you have a relationship that is 13:55:56  
 4 more beneficial than one that doesn't. 13:55:59  
 5 BY MS. LIN: 13:56:02  
 6 Q Would Circuit City prefer to do business 13:56:02  
 7 with those CRT finished product vendors it 13:56:05  
 8 considered itself to have a consistent 13:56:10  
 9 relationship with? 13:56:11  
 10 A We prefer to do business with those that 13:56:13  
 11 we trust 13:56:16  
 12 Q Do you recall specific CRT finished 13:56:18  
 13 product vendors that Circuit City trusted during 13:56:21  
 14 the relevant period? 13:56:23  
 15 MR. GRALEWSKI: Objection, form. 13:56:26  
 16 THE WITNESS: Yes, again, I could only 13:56:28  
 17 speak to those brands that I dealt with 13:56:30  
 18 directly, but I don't know how I could answer 13:56:32  
 19 the question for all the other buyers which I 13:56:40  
 20 think is what you are asking me. 13:56:43  
 21 BY MS. LIN: 13:56:46  
 22 Q Testifying on behalf of Circuit City, 13:56:48  
 23 are there any CRT finished product vendors of 13:56:50  
 24 which you are aware of Circuit City not having a 13:56:52  
 25 strong relationship with? 13:56:57

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1 A At one time we did not carry Samsung 13:56:58  
 2 product at all, for example, and we started and 13:57:02  
 3 stopped various relationships over the years for 13:57:09  
 4 various reasons. 13:57:15  
 5 Hitachi had been a good partner of 13:57:18  
 6 Circuit City for quite a long time. I was 13:57:20  
 7 involved with developing the DVD camcorder with 13:57:24  
 8 Hitachi and so they made CRT -- well they sold CRT 13:57:28  
 9 product. I don't know if they made it. 13:57:35  
 10 They sold CRT product and so I know that 13:57:37  
 11 we had a particularly good relationship with 13:57:40  
 12 Hitachi at times and at other times we didn't. 13:57:43  
 13 Q Having a good relationship with a 13:57:49  
 14 particular vendor might among other things being 13:57:52  
 15 equal influence Circuit City's decision to 13:57:54  
 16 purchase from that vendor? 13:57:57  
 17 A It sort of goes back to, "Why are you 13:57:59  
 18 having a good relationship?" and they go back to 13:58:03  
 19 all of those factors because they are giving you 13:58:06  
 20 product that is not widely sold, they are giving 13:58:08  
 21 you product that has extremely good profitability 13:58:11  
 22 opportunities. 13:58:18  
 23 Obviously, we set our own price. They 13:58:20  
 24 give you funding that allows you to train your 13:58:23  
 25 people and run the proper ads that you want to 13:58:26

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1 run. 13:58:29  
 2 In that aspect, yes, I mean, but all of 13:58:30  
 3 those factors make them the sort of the good 13:58:33  
 4 relationship, not the good relationship makes the 13:58:39  
 5 others. 13:58:42  
 6 Q So the availability of MDF funds to 13:58:48  
 7 Circuit City might influence Circuit City's vendor 13:58:52  
 8 selection to purchase a CRT finished product? 13:58:54  
 9 MR. LAHAD: Misstates testimony. 13:58:57  
 10 THE WITNESS: The costs of the product 13:58:59  
 11 is negotiated first and then demand of the 13:59:01  
 12 product and all of those sort of things, and 13:59:05  
 13 yes, we expect to have MDF as part of that, 13:59:08  
 14 but there are so many other factors and to 13:59:13  
 15 put it way you put it, I would not. 13:59:17  
 16 MS. LIN: Give me a second to dig into 13:59:27  
 17 my box of tricks down here. 13:59:30  
 18 (Whereupon, Deposition Exhibit 2837 is marked for 13:59:47  
 19 identification.) 13:59:47  
 20 MS. LIN: I am going to mark as Exhibit 13:59:47  
 21 2837 a document with Bates No. CC 0148714. I 13:59:49  
 22 will represent to you that the handwriting on 14:00:02  
 23 this document was as produced by Circuit 14:00:02  
 24 City. 14:00:05  
 25 BY MS. LIN: 14:00:22

27 (Pages 102 - 105)

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1 Q Are you familiar with the people on the 14:00:22  
2 first page of Exhibit 2837? 14:00:24  
3 A Yes. 14:00:26  
4 Q Who are those people? 14:00:27  
5 A Andrew Scholclapper who is a buyer. 14:00:30  
6 Rick Souder who was either a buyer or a division 14:00:34  
7 merchandise manager, most likely the division 14:00:40  
8 merchandise manager, and David Cecile, who was 14:00:43  
9 either a buyer or a division merchandise manager 14:00:49  
10 at the time. This is 2000. So I am not sure. 14:00:52  
11 Q I am concentrating on the first page of 14:00:59  
12 Exhibit 2837, what do you understand Andrew 14:01:01  
13 Scholclapper to be discussing with Mr. Souder and 14:01:05  
14 Mr. Cecile? 14:01:07  
15 MR. GRALEWSKI: Objection, form. 14:01:11  
16 THE WITNESS: He is discussing the 14:01:13  
17 impact of Panasonic, and what I believe PTV 14:01:15  
18 stands for is projection television, but I 14:01:20  
19 don't know. 14:01:26  
20 He is discussing the program with 14:01:27  
21 Panasonic and what the impact is to Circuit 14:01:32  
22 City. 14:01:36  
23 BY MS. LIN: 14:01:37  
24 Q What concerns does Mr. Scholclapper 14:01:37  
25 raise? 14:01:40

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1 MR. LAHAD: The document speaks for 14:01:41  
2 itself. 14:01:42  
3 MR. GRALEWSKI: Objection, form, outside 14:01:42  
4 the scope. 14:01:45  
5 THE WITNESS: Give me a moment to read 14:01:49  
6 this. 14:01:51  
7 BY MS. LIN: 14:01:52  
8 Q Absolutely. 14:01:53  
9 A The short answer I would give you is 14:02:46  
10 that he is discussing the impact of doing business 14:02:48  
11 with Panasonic and what impact it will have on the 14:02:53  
12 business that he has been discussing to do with 14:02:58  
13 Hitachi and Thomson. 14:03:03  
14 Q Do you see in point number 2, where 14:03:12  
15 Mr. Scholclapper says, "Backing out on them now 14:03:15  
16 might lose his trust in the long term." 14:03:18  
17 MR. GRALEWSKI: Same objection. 14:03:22  
18 THE WITNESS: Hang on a second. Yes. 14:03:27  
19 BY MS. LIN: 14:03:39  
20 Q What concerned you to understand 14:03:40  
21 Mr. Scholclapper to be expressing there? 14:03:42  
22 MR. GRALEWSKI: Same objection. 14:03:45  
23 THE WITNESS: He is basically telling 14:03:46  
24 the supervisors that he is building trust in 14:03:47  
25 him and therefore in Circuit City and that if 14:03:53

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1 he does what he is discussing here that he 14:03:57  
2 risked harming that trust. 14:03:59  
3 BY MS. LIN: 14:04:01  
4 Q Engaging in a more favorable deal here 14:04:10  
5 with Panasonic might damage Circuit City's 14:04:13  
6 relationship with another vendor? 14:04:16  
7 MR. GRALEWSKI: Same objection. 14:04:19  
8 MR. LAHAD: Misstates the testimony. 14:04:21  
9 THE WITNESS: Yes, I don't know that 14:04:22  
10 this is a more favorable deal first of all. 14:04:23  
11 I can't answer that question because I can't 14:04:25  
12 tell you that this is a more favorable deal. 14:04:32  
13 I think he is actually arguing that it is a 14:04:35  
14 less favorable deal. 14:04:37  
15 BY MS. LIN: 14:04:38  
16 Q Is a part of the reason that the 14:04:40  
17 proposed deal from Panasonic in Exhibit 2837 less 14:04:42  
18 attractive because it might damage relationships 14:04:47  
19 with other of Circuit City's CRT finished product 14:04:48  
20 vendors? 14:04:52  
21 MR. LAHAD: Lacks foundation and calls 14:04:53  
22 for speculation. 14:04:54  
23 MR. GRALEWSKI: Same objections. 14:04:57  
24 THE WITNESS: I think he is arguing 14:04:59  
25 again that he doing this is going to cause 14:04:59

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1 him to have less credibility with the people 14:05:03  
2 he has to negotiate with. 14:05:06  
3 BY MS. LIN: 14:05:08  
4 Q It was important for buyers to maintain 14:05:08  
5 their credibility with CRT finished product 14:05:11  
6 vendors? 14:05:14  
7 A It is important for buyers to maintain 14:05:15  
8 their credibility with all vendors. 14:05:19  
9 Q Could you read point number 4 on this. 14:05:24  
10 A Out loud? 14:05:29  
11 Q Just to yourself is fine. Do you 14:05:30  
12 understand what Mr. Scholclapper is referring to 14:05:45  
13 when he says "references playing by the rule 14:05:47  
14 book"? 14:05:52  
15 MR. GRALEWSKI: Same objections. 14:05:56  
16 THE WITNESS: He says that what he means 14:06:04  
17 is fair costs and distributions result in a 14:06:07  
18 meeting are profit expectations so that's the 14:06:09  
19 only way that it would imply that that is 14:06:12  
20 what he means. 14:06:16  
21 I don't know who Don is, by the way, so 14:06:19  
22 I do not understand part of the context of 14:06:22  
23 this letter. 14:06:24  
24 BY MS. LIN: 14:06:31  
25 Q Did Circuit City expect that there 14:06:34

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|----------|--|----------|---|
| 1        | vendors would provide fair costs and 14:06:36          | 1        | From the time you saw the product to 14:09:10               |
| 2        | distributions? 14:06:40                                | 2        | the time you made the agreement, it is like 14:09:12        |
| 3        | A Yes. 14:06:41  | 3        | one long negotiation. 14:09:15                              |
| 4        | Q Where does Circuit City's negotiations 14:07:00      | 4        | BY MS. LIN: 14:09:16  |
| 5        | with finished product vendors occur for CRT 14:07:02   | 5        | Q Were negotiations ever concluded on 14:09:16              |
| 6        | finished products? 14:07:07                            | 6        | those trips abroad in terms of selecting a cost to 14:09:19 |
| 7        | MR. LAHAD: Is there a time period? 14:07:09            | 7        | Circuit City at which it would buy CRT finished 14:09:24    |
| 8        | MS. LIN: During the relevant time 14:07:10             | 8        | products? 14:09:27  |
| 9        | period. 14:07:11                                       | 9        | A It is possible because there are certain 14:09:28         |
| 10       | THE WITNESS: When we go to visit them 14:07:12         | 10       | products, "We really want you to sell this and 14:09:31     |
| 11       | overseas, where you have got everybody 14:07:17        | 11       | it's a brand new product and there's nothing like 14:09:35  |
| 12       | together and talking about the product as we 14:07:18  | 12       | it and it's the first 40-inch television," for 14:09:42     |
| 13       | talked about earlier you start the 14:07:20            | 13       | example. 14:09:48   |
| 14       | negotiations there because that's when you 14:07:23    | 14       | I could see and I sit in on some of 14:09:49                |
| 15       | first see the product, they first talk about 14:07:26  | 15       | these meetings because I was video, and I could 14:09:54    |
| 16       | what they are thinking that they are going to 14:07:28 | 16       | see a buyer saying, "We are going to buy that and 14:09:56  |
| 17       | put their suggested retail price at, and some 14:07:31 | 17       | all he has seen is the list price and he might buy 14:10:00 |
| 18       | of those are like trial balloons to see if 14:07:33    | 18       | it at a list price or he might be able to get a 14:10:04    |
| 19       | you think that is viable or not, it goes 14:07:38      | 19       | little better, but he is really committed either 14:10:08   |
| 20       | straight out. 14:07:40                                 | 20       | way. 14:10:11   |
| 21       | "We are thinking that this could make 14:07:42         | 21       | So to answer your question, it could 14:10:11               |
| 22       | \$399 in the market place or retail price, do 14:07:43 | 22       | happen and I am sure it did happen along the way 14:10:14   |
| 23       | you think that would be viable?" and you 14:07:46      | 23       | particularly for any new dynamic type of change 14:10:17    |
| 24       | would say, "No, I don't think so." 14:07:48            | 24       | which for CRT would have been size. 14:10:26                |
| 25       | It starts at that big line where you 14:07:52          | 25       | Q When Circuit City's representatives went 14:10:32         |
| Page 111 |  | Page 113 |   |
| 1        | have got everybody from the company there, 14:07:53    | 1        | abroad to examine CRT finished products, was it 14:10:36    |
| 2        | and you have got -- when we go to Japan, we 14:07:55   | 2        | meeting with domestic suppliers based here in the 14:10:41  |
| 3        | would stay for the week and we visit all the 14:08:03  | 3        | United States that also went abroad or with -- let 14:10:41 |
| 4        | vendors in Japan and we would go to Korea 14:08:07     | 4        | me stop there. 14:10:47                                     |
| 5        | and we would stay for the week. 14:08:09               | 5        | MR. LAHAD: Vague. 14:10:49                                  |
| 6        | We would go to China and do the same 14:08:10          | 6        | THE WITNESS: The majority -- I am 14:10:50                  |
| 7        | thing, so that's where it starts, and then, 14:08:13   | 7        | sorry? 14:10:51   |
| 8        | typically, what would happen is that you 14:08:18      | 8        | MR. LAHAD: Vague. 14:10:53                                  |
| 9        | would get back home and you would have, 14:08:23       | 9        | THE WITNESS: The majority of the time 14:10:54              |
| 10       | "Okay, I know we talked about that it might 14:08:25   | 10       | we would meet with representatives from the 14:10:56        |
| 11       | be \$799, but we have decided that it is 14:08:29      | 11       | company in whatever country we are visiting 14:11:03        |
| 12       | going to be \$699 and here's the costs that 14:08:30   | 12       | and representatives of theirs that managed 14:11:05         |
| 13       | is manufactured suggested retail price and 14:08:35    | 13       | the sales in the U.S. would be there with us, 14:11:10      |
| 14       | here is the cost to you." 14:08:37                     | 14       | It was very rare that they were not 14:11:14                |
| 15       | Then you would start having the 14:08:40               | 15       | also there, but there would be large amounts 14:11:16       |
| 16       | negotiations sometimes in person, but most 14:08:41    | 16       | of people because the vendor wants all of 14:11:20          |
| 17       | likely over the phone or through email. 14:08:46       | 17       | their people to say, "This is the guy who is 14:11:25       |
| 18       | You might maybe visit again. 14:08:49                  | 18       | either going to buy it or not buy it." 14:11:28             |
| 19       | They might have a show where we change 14:08:53        | 19       | There would be a large cast of people. 14:11:32             |
| 20       | some things, so what you saw might not 14:08:55        | 20       | You might have 50 people in the room. You 14:11:35          |
| 21       | exactly be what the product is going to look 14:08:57  | 21       | might have seats all the way around where 14:11:38          |
| 22       | like and so you have to go either back to 14:08:59     | 22       | you didn't even know where half of these 14:11:41           |
| 23       | Japan or wherever or go to a corporate 14:09:01        | 23       | people did, but you typically had the 14:11:43              |
| 24       | office in the U.S. and look at the product 14:09:05    | 24       | president of the company that would come in. 14:11:46       |
| 25       | again and continue to negotiate. 14:09:07              | 25       | You would typically have the head of 14:11:49               |

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1 that division who would come in. 14:11:50  
 2 You would have like the U.S. president 14:11:54  
 3 of that company come in. You would have 14:11:58  
 4 head of sales for that company come in and 14:12:00  
 5 then you might have the Circuit City rep. 14:12:03  
 6 the national account manager come in, but in 14:12:06  
 7 some rare cases, if there was something 14:12:12  
 8 specific you wanted to go see, you might 14:12:14  
 9 just be seeing some product and they may not 14:12:17  
 10 be paying the money for U.S. people to be 14:12:21  
 11 going with you. That would be extremely 14:12:24  
 12 rare. 14:12:26  
 13 BY MS. LIN: 14:12:26  
 14 Q Did the foreign CRT finished product 14:12:26  
 15 companies pay for Circuit City's representatives 14:12:35  
 16 to travel to them? 14:12:38  
 17 A Yes. 14:12:39  
 18 Q Other than the meetings? 14:12:43  
 19 A They didn't pay all expenses. We sort 14:12:45  
 20 of had some rules about that. Typically they 14:12:48  
 21 would pick up air fare and hotel and we pick up 14:12:52  
 22 anything else like parking and incidentals and so 14:12:57  
 23 on and since we would arrange them in the way we 14:13:03  
 24 did, it would be shared with all of the people we 14:13:07  
 25 visited. 14:13:09

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1 We used to have what we called 14:13:10  
 2 "two-a-days," so that for the first half of a day 14:13:13  
 3 you were with one vendor and the second half with 14:13:15  
 4 another so that in the period of a week that's 14:13:18  
 5 or 8 or whatever and then you divide the cost of 14:13:21  
 6 the air and the hotel by the amount of vendors. 14:13:24  
 7 Q Would the costs that the vendors spent 14:13:33  
 8 related to those trips be reflected in any way in 14:13:36  
 9 the Circuit City transactional data listing the 14:13:39  
 10 costs of CRT finished product purchases? 14:13:43  
 11 A No. 14:13:45  
 12 Q Other than the trips where Circuit 14:13:46  
 13 City's representatives went abroad to meet with 14:13:49  
 14 CRT finished product companies, did Circuit City's 14:13:52  
 15 representatives ever discuss CRT finished product 14:13:56  
 16 purchases negotiations with vendor representatives 14:14:00  
 17 located outside of the United States? 14:14:06  
 18 A There were specific times when we would 14:14:10  
 19 have phone calls with a U.S. representative that 14:14:13  
 20 they would conference in people from outside of 14:14:22  
 21 the country, so yes. 14:14:26  
 22 Q Can you recall what those specific 14:14:33  
 23 instances might be? 14:14:36  
 24 MR. LAHAD: Specific vendors? 14:14:39  
 25 MS. LIN: He said there were specific 14:14:41

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1 times. 14:14:44  
 2 BY MS. LIN: 14:14:44  
 3 Q I am trying to understand what that 14:14:44  
 4 means? 14:14:45  
 5 A What I meant is you would have, it 14:14:45  
 6 wasn't a daily activity, but something might 14:14:49  
 7 happen where that would occur whether it be 14:14:53  
 8 because the negotiations are not going well, or 14:14:56  
 9 because sales are not going well. 14:14:58  
 10 I mean those are sort of the biggies 14:15:01  
 11 that there would be conversations that we would 14:15:04  
 12 have people from outside of the country in on the 14:15:07  
 13 conversation to talk about what needed to be done 14:15:13  
 14 to get sales. 14:15:18  
 15 More often what you would get is a visit 14:15:21  
 16 from people that work outside of the country on a 14:15:27  
 17 daily basis that their offices are in Japan or 14:15:32  
 18 Korea, et cetera, that would come to the U.S. and 14:15:35  
 19 with the national account, the U.S. sales team 14:15:39  
 20 would come and visit Circuit City's headquarters 14:15:42  
 21 and talk to them about, "Why is this product not 14:15:47  
 22 selling? Why are we not doing more business 14:15:49  
 23 together, et cetera. Why aren't you buying five 14:15:55  
 24 pieces?" The sales people say they can only sell 14:16:01  
 25 you three. "Why aren't you buying these other 14:16:04

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1 two?" 14:16:07  
 2 Q So foreign representatives from the CRT 14:16:10  
 3 finished product manufacturer would sometimes come 14:16:13  
 4 to Circuit City to try to sell additional amounts 14:16:17  
 5 of their CRT finished products? 14:16:20  
 6 MR. LAHAD: You switched from vendors to 14:16:22  
 7 manufacturers. Are you using 14:16:24  
 8 interchangeably? 14:16:26  
 9 MS. LIN: I am sorry. 14:16:27  
 10 BY MS. LIN: 14:16:29  
 11 Q Would foreign CRT finished product 14:16:29  
 12 vendors sometimes come to Circuit City to try to 14:16:31  
 13 pitch selling more of their CRT finished products? 14:16:34  
 14 A Yes. 14:16:37  
 15 Q Did Circuit City have policies related 14:16:38  
 16 to how to set its sales prices? So now we are 14:16:40  
 17 switching from purchases to sales? 14:16:44  
 18 A Yes, so our daily then sale -- do you 14:16:46  
 19 mean like an advertised sale or do you mean the 14:16:57  
 20 price that we sell it at? 14:17:00  
 21 Q The price that you would sell it at? 14:17:02  
 22 A Our standard policy was to price a 14:17:05  
 23 product at the manufacturer's suggested retail 14:17:08  
 24 price to do our best to try to do that. 14:17:11  
 25 Q Did Circuit City have any policies 14:17:21

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1 related to achieving certain margins based on its 14:17:24  
2 sale prices? 14:17:28  
3 A We had margin budgets to be able to put 14:17:31  
4 a business plan together. The pricing has to be 14:17:37  
5 competitive, so I would answer that, no, in that 14:17:44  
6 we did not price to hit the margin. 14:17:49  
7 We priced to sell the product and then 14:17:52  
8 try to do whatever else we could do to influence 14:17:57  
9 the overall margins being better. 14:18:02  
10 Q How did Circuit City select its margin 14:18:05  
11 budgets? 14:18:09  
12 A Based on history and opportunity. So if 14:18:10  
13 it's been delivering this, you are trying to at 14:18:16  
14 least maintain that, but there may be an 14:18:21  
15 opportunity to improve it if there are innovations 14:18:23  
16 or new items that you can get behind or if you can 14:18:31  
17 increase the average, even though it doesn't 14:18:34  
18 change the margin, if you increase the average 14:18:37  
19 retail, then you are making more profit dollars 14:18:40  
20 and that is really at the end of the day is what 14:18:43  
21 we were most measured on is the profit dollars. 14:18:46  
22 The old joke inside is, "Yes, you made 14:18:51  
23 30 points margin, but you sold \$100 and your 14:18:54  
24 budget was \$1,000, so you failed." 14:18:58  
25 Q Not good. Do you recall what Circuit 14:19:01

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1 City's margin budgets were for CRT finished 14:19:04  
2 products during the relevant period? 14:19:08  
3 A No. 14:19:09  
4 Q What type of document would those margin 14:19:11  
5 budgets be tracked in? 14:19:15  
6 MR. LAHAD: Objection, lacks foundation. 14:19:18  
7 THE WITNESS: (No response) 14:19:18  
8 BY MS. LIN: 14:19:18  
9 Q Would those margin budgets be recorded 14:19:19  
10 somewhere in Circuit City's records? 14:19:22  
11 A Yes. 14:19:24  
12 Q Where? 14:19:25  
13 A Well, records. They would be 14:19:27  
14 communicated within the merchandising team and so 14:19:29  
15 we had a financial planning and analysis group, F, 14:19:33  
16 P and A, that you will see some documents called 14:19:41  
17 the 3M Report, and the 3M Report would say, "This 14:19:46  
18 is your score card. Here's your budget broken 14:19:50  
19 down for the year, broken down to the week level," 14:19:57  
20 but DMMs were part of the budget process and would 14:20:00  
21 present to their general managers and to the vice 14:20:12  
22 president of merchandising, their business plans 14:20:17  
23 for overall profitability. 14:20:21  
24 They would influence where the margins 14:20:27  
25 budgets want to be and so if you find budgets you 14:20:31

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1 are going to find it in those, the proposed 14:20:34  
2 budgets, and finalized budgets and you are going 14:20:37  
3 to find it in the 3M Report, and then a lot of the 14:20:40  
4 other reports that we had prior to the 3M Report 14:20:50  
5 were on demand reports, so we could query the AS 14:20:53  
6 40K and it tell us what have we sold and what our 14:20:59  
7 margins are overall, at the corporate level and we 14:21:04  
8 could take all the way down the store level. 14:21:08  
9 Q Did different stores have different 14:21:14  
10 margin budgets? 14:21:16  
11 A No. 14:21:17  
12 Q You said DMM, what is that? 14:21:18  
13 A Division merchandise manager. That 14:21:20  
14 title was sometimes the merchandise manager, 14:21:24  
15 sometimes division merchandise manager, and for 14:21:26  
16 the end of this period, I believe, was BTL, which 14:21:30  
17 is business team ~~also~~ lead 14:21:33  
18 Q Did Circuit City's buyers ever ask 14:21:36  
19 Circuit City's CRT finished product vendors to 14:21:40  
20 help Circuit City achieve its margin budgets 14:21:44  
21 during negotiations to purchases CRT finished 14:21:46  
22 product? 14:21:50  
23 MR. LAHAD: Vague. 14:21:51  
24 THE WITNESS: I would answer that in 14:21:57  
25 that we would say this product is not going 14:21:59

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1 to deliver the profit that my budget says 14:22:03  
2 that I need to deliver. 14:22:07  
3 This is going to have an impact on my 14:22:09  
4 ability to make my budget. 14:22:13  
5 Did we negotiate the budget, no. 14:22:15  
6 We are negotiating the product and 14:22:19  
7 needs to be a lower cost. The sort of 14:22:20  
8 simple way I put it is the buyers would 14:22:24  
9 ~~say~~, but that is the only context I can 14:22:27  
10 think of it. 14:22:31  
11 We definitely talked about margins and 14:22:33  
12 what our expected margins were and what are 14:22:36  
13 actual margins were. 14:22:39  
14 BY MS. LIN: 14:22:42  
15 Q Do you know during the relevant period 14:22:42  
16 whether Circuit City's expected margins how they 14:22:45  
17 lined up with Circuit City's actual margins on CRT 14:22:49  
18 finished product sales? 14:22:52  
19 A I do not. 14:22:53  
20 Q For CRT finished product sales, did 14:22:58  
21 Circuit City ever have minimum profit margins? 14:23:01  
22 MR. GRALEWSKI: Objection to the form. 14:23:05  
23 BY MS. LIN: 14:23:06  
24 Q During the relevant period did Circuit 14:23:08  
25 City have a policy regarding minimum profit 14:23:11

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| Page 122 |   | Page 124 |  |
|----------|---|----------|--|
| 1        | margins on its CRT finished product sales? 14:23:14         | 1        | Q What did he do for Circuit City? 14:28:04                |
| 2        | A I don't know. I would not think so. 14:23:18              | 2        | A For over a decade, I believe he was a 14:28:06           |
| 3        | Q Do you know if Circuit City's buyers in 14:23:27          | 3        | trainer for Circuit City, and his last positions 14:28:10  |
| 4        | the course of their negotiations for CRT finished 14:23:30  | 4        | for Circuit City was that he worked in the store 14:28:15  |
| 5        | products ever provided their margin targets to 14:23:34     | 5        | merchandising department, but I do not know what 14:28:20  |
| 6        | Circuit City finished product vendors? 14:23:37             | 6        | he was responsible for. 14:28:25                           |
| 7        | A Yes. Let me amend that. We would 14:23:39                 | 7        | Q When you say trainer who was he 14:28:27                 |
| 8        | provide a targeted margin for that vendor, not our 14:23:58 | 8        | training? 14:28:29   |
| 9        | targeted margin overall, 14:24:05                           | 9        | A Sales counselors. Salespeople. Our 14:28:30              |
| 10       | BY MS. LIN: 14:24:08  | 10       | sales pool. 14:28:33                                       |
| 11       | Q So Circuit City would provide specific 14:24:09           | 11       | Q On how to sell products at Circuit City? 14:28:33        |
| 12       | CRT finished product vendors with a margin Circuit 14:24:11 | 12       | A (Non-verbalized response.) 14:28:38                      |
| 13       | City hoped to achieve selling that vendor's CRT 14:24:15    | 13       | THE REPORTER: Is that a yes? 14:28:38                      |
| 14       | finished products? 14:24:18                                 | 14       | THE WITNESS: I am sorry. Yes. 14:28:38                     |
| 15       | A Correct, and specifically those 14:24:19                  | 15       | THE REPORTER: That's all right. I just 14:28:38            |
| 16       | products, so you might have five pieces from a 14:24:22     | 16       | did not want the watered down version of it. 14:28:38      |
| 17       | vendor, and say, if I am going to sell a \$700 14:24:28     | 17       | BY MS. LIN: 14:28:38                                       |
| 18       | product, then I expect to make 30 points off of 14:24:32    | 18       | Q I want to direct your attention to the 14:28:44          |
| 19       | it, but that one that is \$99 my expectation is 14:24:36    | 19       | top of page 2 of Exhibit 2838. Do you see where 14:28:45   |
| 20       | that I will make 20 points off of it. 14:24:40              | 20       | Mr. Roberson says, "I am squeezing every dime out 14:28:52 |
| 21       | (Whereupon, Deposition Exhibit 2838 is marked for 14:24:49  | 21       | of SEA for margin advertising and partnership 14:28:55     |
| 22       | identification.) 14:24:49                                   | 22       | ideas even though it may not appear so?" 14:28:58          |
| 23       | MS. LIN: I am going to mark as Exhibit 14:24:49             | 23       | A Yes. 14:29:00  |
| 24       | 2838, a document Bates Number beginning CC 14:24:51         | 24       | Q Did Circuit City expect its vendors to 14:29:03          |
| 25       | 0572187. 14:24:55   | 25       | squeeze themselves for margin advertising and 14:29:06     |
| Page 123 |   | Page 125 |  |
| 1        | BY MS. LIN: 14:25:03  | 1        | partnership ideas? 14:29:08                                |
| 2        | Q You can familiarize yourself with this 14:25:04           | 2        | MR. LAHAD: Objection, vague. 14:29:10                      |
| 3        | document for the moment. I am going to be asking 14:25:15   | 3        | MR. GRALEWSKI: Objection to the form. 14:29:12             |
| 4        | you about the first two pages. 14:25:17                     | 4        | THE WITNESS: I am not really sure that 14:29:14            |
| 5        | A You want me to read only the first two 14:27:25           | 5        | I can answer that one without laughing. We 14:29:18        |
| 6        | pages? 14:27:28   | 6        | expected them to act like they were. 14:29:23              |
| 7        | Q Let me ask you some questions and if you 14:27:28         | 7        | BY MS. LIN: 14:29:26                                       |
| 8        | feel you need to look at more of the document 14:27:30      | 8        | Q Following that sentence still on the 14:29:29            |
| 9        | please let me know. Are you familiar with Danny 14:27:33    | 9        | same page where Mr. Roberson says, "There is no 14:29:33   |
| 10       | Caglin? 14:27:34  | 10       | one at CC up to the CEO that can explain why CC 14:29:37   |
| 11       | A Yes. 14:27:37   | 11       | has to have such significantly higher margins and 14:29:41 |
| 12       | Q And remind me, who is that? 14:27:38                      | 12       | programs than everyone else in America." 14:29:44          |
| 13       | A Danny Caglin is a buyer for Circuit City 14:27:40         | 13       | A Yes. 14:29:47  |
| 14       | Stores. 14:27:42  | 14       | Q Do you understand CC in that context to 14:29:48         |
| 15       | Q Are you familiar with Clyde Roberson? 14:27:42            | 15       | mean Circuit City? 14:29:51                                |
| 16       | A Roberson, yes. 14:27:45                                   | 16       | A Yes. 14:29:51  |
| 17       | Q Who is Mr. Roberson? 14:27:46                             | 17       | Q What do you think Mr. Roberson is 14:29:53               |
| 18       | A In this capacity he is the national 14:27:48              | 18       | saying? 14:29:53   |
| 19       | account manager for Samsung Electronics. 14:27:50           | 19       | MR. LAHAD: Calls for speculation. 14:29:55                 |
| 20       | Q Was Mr. Roberson ever employed by 14:27:56                | 20       | THE WITNESS: I think he is basically 14:29:58              |
| 21       | Circuit City? 14:27:59                                      | 21       | saying that we are getting favorable 14:30:01              |
| 22       | A Yes. 14:27:59   | 22       | treatment. 14:30:05  |
| 23       | Q Did you know him in his capacity as a 14:28:00            | 23       | BY MS. LIN: 14:30:07                                       |
| 24       | Circuit City employee? 14:28:03                             | 24       | Q In your experience does Circuit City 14:30:08            |
| 25       | A Yes. 14:28:03   | 25       | have significantly higher margins and programs 14:30:10    |

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1 than everyone else in America? 14:30:14  
2 A I do not know. I would have no way of 14:30:15  
3 knowing. 14:30:17  
4 Q Are you familiar with any of Circuit 14:30:18  
5 City's vendors ever expressing that they thought 14:30:20  
6 Circuit City had higher margins than other 14:30:23  
7 companies in America? 14:30:26  
8 MR. LAHAD: This document? 14:30:28  
9 MS. LIN: Yes. 14:30:29  
10 THE WITNESS: I was party to 14:30:31  
11 conversations where they would say, "Because 14:30:31  
12 you have a trained sales force we give you 14:30:35  
13 higher margins than someone else because you 14:30:39  
14 provide the ability to sell better goods," 14:30:43  
15 and they want those goods sold, and therefore 14:30:46  
16 they are doing it. 14:30:49  
17 But again as far as any conversations 14:30:53  
18 about our cost versus another person that we 14:30:57  
19 were taught we did not discuss costs. Our 14:31:02  
20 costs, the other guy's cost, we talk about 14:31:07  
21 our own profitability. 14:31:11  
22 (Whereupon, Deposition Exhibit 2839 is marked for 14:31:12  
23 Identification.) 14:31:12  
24 MS. LIN: Put that back to the side. I 14:31:22  
25 am going to mark as Exhibit 2839 a document 14:31:37

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1 beginning with Bates No. CC 0569329. 14:31:41  
2 THE WITNESS: I have read it. 14:32:40  
3 BY MS. LIN: 14:32:41  
4 Q Focusing your attention on the final 14:32:42  
5 sentence, do you know what Mr. Scholtepper means 14:32:44  
6 when he writes that, "The program is a sort of 14:32:45  
7 purgatory that denies both the glories of margin 14:32:48  
8 heaven as well as the costs needed to descend into 14:32:51  
9 promotional hell?" well 14:32:52  
10 MR. LAHAD: Calls for speculation. 14:32:55  
11 MR. GRALEWSKI: Objection, form. 14:32:58  
12 THE WITNESS: I would assume he means 14:33:00  
13 that he does not view this as a good program. 14:33:02  
14 BY MS. LIN: 14:33:06  
15 Q Do you know what Circuit City considered 14:33:06  
16 to be margin heaven? 14:33:09  
17 MR. LAHAD: Lacks foundation, calls for 14:33:13  
18 speculation. 14:33:15  
19 THE WITNESS: Not heaven, but good 14:33:20  
20 margins would be margin that are above your 14:33:24  
21 average margins and bad margins would be 14:33:28  
22 those below your average margins. 14:33:30  
23 BY MS. LIN: 14:33:33  
24 Q Do you know what Circuit City's average 14:33:33  
25 margins were on CRT finished products at this 14:33:37

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1 time? 14:33:41  
2 A No. 14:33:41  
3 Q Was circuit striving to avoid 14:33:45  
4 promotional hell? 14:33:47  
5 MR. LAHAD: Objection, vague, lacks 14:33:51  
6 foundation. 14:33:52  
7 THE WITNESS: I think he is trying to 14:33:57  
8 avoid promoting product that is not going to 14:33:59  
9 be very profitable. 14:34:06  
10 (Whereupon, Deposition Exhibit 2840 is marked for 14:34:08  
11 Identification.) 14:34:08  
12 MS. LIN: You can put that exhibit 14:34:08  
13 aside. I am going to mark as Exhibit 2840, a 14:34:09  
14 document beginning with Bates No. CC 0543314. 14:34:20  
15 BY MS. LIN: 14:34:54  
16 Q If you could just familiarize yourself 14:34:54  
17 briefly with the document and if you feel like you 14:34:55  
18 need more time, please just let me know. 14:34:55  
19 A If you are going to ask about a specific 14:35:01  
20 sentence, I will read those, but I know what this 14:35:03  
21 document is, yes. 14:35:05  
22 Q So what is this document? 14:35:06  
23 A This is a document to the president of 14:35:07  
24 the company, and to the head of merchandising and 14:35:10  
25 a copy to another district merchant basically 14:35:16

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1 giving them the behind the scenes viewpoint of 14:35:22  
2 strategic issues before Circuit City meets with 14:35:27  
3 Thomson, 14:35:32  
4 So senior management, we call this the 14:35:34  
5 white paper before we would go to visit a vendor. 14:35:37  
6 These are pretty standard type of things. The 14:35:40  
7 third and fourth page of this is written by me. 14:35:55  
8 Q Focused on the video and camcorder. 14:36:01  
9 A Yes, you see our camcorder portion, they 14:36:04  
10 do not say that it is written by me, but it is 14:36:09  
11 written by me. 14:36:11  
12 Q What generally was the purpose of this 14:36:12  
13 type of white paper? 14:36:14  
14 A Because you were going in and having 14:36:15  
15 very senior level conversations you wanted to make 14:36:19  
16 sure that your senior management knew what the 14:36:24  
17 opportunities and risks were for that meeting and 14:36:27  
18 because of these meetings you might have a dinner 14:36:32  
19 and somebody might bring up one of these issues, 14:36:36  
20 or whatever, you wanted everybody who was going to 14:36:39  
21 be at the meeting to understand what's going on so 14:36:42  
22 that if they have the opportunity to reinforce, to 14:36:47  
23 lessen the risk and increase the opportunities, 14:36:52  
24 that they can help the buyer do so. 14:36:54  
25 This is basically the buyer telling 14:36:57

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1 senior management what is going on and as we all 14:37:01  
2 go in to meet with them, want you to know what is 14:37:04  
3 going on. 14:37:07  
4 Q I want to direct your attention to the 14:37:08  
5 second bullet on page 2 that begins, "Thomson 14:37:09  
6 continues," what do you understand this point, the 14:37:13  
7 second bullet on page 2 to be saying? 14:37:19  
8 MR. GRALEWSKI: Objection, form. 14:37:24  
9 THE WITNESS: Basically he is saying 14:37:31  
10 that Thomson is creating a disruption in the 14:37:33  
11 marketplace that will have a ripple effect 14:37:36  
12 and cost us money. 14:37:40  
13 BY MS. LIN: 14:37:41  
14 Q How is Thomson creating a disruption in 14:37:45  
15 the marketplace? 14:37:48  
16 A Because they are pricing their product 14:37:48  
17 well below all other brands with similar featured 14:37:51  
18 product and by doing so they are reducing the 14:37:56  
19 overall average retail for everything so you don't 14:38:02  
20 have as much profit dollars because of that. 14:38:06  
21 Q Did Circuit City consider that reduction 14:38:12  
22 by Thomson to be unfavorable? 14:38:15  
23 MR. LAHAD: Objection, vague. 14:38:18  
24 MR. GRALEWSKI: Objection, form, to this 14:38:20  
25 question and the prior. 14:38:22

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1 THE WITNESS: He says that he doesn't 14:38:25  
2 understand why you would do something that 14:38:28  
3 reduces both their own profits and the 14:38:30  
4 profits to retailers so he is saying that it 14:38:33  
5 doesn't make sense. 14:38:37  
6 BY MS. LIN: 14:38:38  
7 Q Would you agree that Thomson reducing 14:38:38  
8 its prices in that fashion doesn't make sense? 14:38:41  
9 MR. GRALEWSKI: Objection, form. 14:38:45  
10 THE WITNESS: I would have to know more 14:38:47  
11 about all of the other circumstances, but 14:38:49  
12 typically, there is some consumer acceptance 14:38:52  
13 that this product is worth that amount of 14:39:02  
14 dollars and the people that are competing for 14:39:07  
15 those sales are generally going to be around 14:39:10  
16 that price. 14:39:12  
17 To position all of your product below 14:39:15  
18 the price, and also trying to sell because 14:39:17  
19 they have the Thomson brand, they are trying 14:39:24  
20 to sell the Thomson brand at a higher price. 14:39:26  
21 That's the part that does not make 14:39:30  
22 sense. If it was just trying to sell one 14:39:29  
23 and he is going to grab all the market 14:39:33  
24 share, kind of makes sense. 14:39:35  
25 But in this context where he is trying 14:39:37

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1 to sell both, it doesn't make sense because 14:39:38  
2 it looks like he is going to keep himself 14:39:40  
3 from selling his own better product. 14:39:43  
4 BY MS. LIN: 14:39:47  
5 Q Was it harmful to Circuit City if its 14:39:47  
6 vendors positioned their products well below the 14:39:50  
7 market price used by other vendors of similar 14:39:53  
8 products? 14:39:57  
9 MR. LAHAD: Objection, vague. 14:39:57  
10 THE WITNESS: I could not give a yes or 14:40:04  
11 no answer to that. It might be advantageous 14:40:06  
12 to Circuit City for the vendor to position 14:40:10  
13 their pricing below others if we are only 14:40:13  
14 ones who carry it. 14:40:17  
15 BY MS. LIN: 14:40:18  
16 Q What if Circuit City is not the only one 14:40:18  
17 carrying that product? 14:40:21  
18 A It might be advantageous still because 14:40:21  
19 it might produce very high margins and increase 14:40:25  
20 sales, but it could also be a disadvantage in that 14:40:28  
21 nobody sells anymore, but everybody sells it for 14:40:32  
22 less. 14:40:36  
23 Q If everybody is selling a specific type 14:40:42  
24 of CRT finished product for less that could reduce 14:40:46  
25 Circuit City's profits? 14:40:49

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1 MR. LAHAD: Misstates the testimony. 14:40:52  
2 THE WITNESS: Yes. 14:40:53  
3 BY MS. LIN: 14:40:53  
4 Q Did Circuit City prefer for its CRT 14:40:57  
5 finished products to sell at higher prices? 14:40:58  
6 A Circuit City has to be competitive. 14:41:04  
7 That is its first priority. The second priority 14:41:08  
8 is to sell as high an average retail product as 14:41:11  
9 it can with the highest average margin. 14:41:14  
10 Anything that decreases the average 14:41:19  
11 retail of a product is a risk, however, if it 14:41:22  
12 increases sales enough to offset the decrease the 14:41:28  
13 lost margin by or loss profit opportunity, then 14:41:34  
14 that is advantageous. 14:41:38  
15 MS. LIN: Let's go ahead and take a 14:41:40  
16 short break to change the tape. 14:41:40  
17 THE VIDEOGRAPHER: The time is 14:41:42  
18 approximately 2:41. This is the end of tape 14:41:44  
19 number 2 and we are off the record. 14:41:46  
20 (After a short recess.) 14:41:47  
21 THE VIDEOGRAPHER: This is the beginning 14:48:59  
22 of tape 3. The time is approximately 2:48 14:49:07  
23 p.m. and we are back on the record. 14:49:13  
24 BY MS. LIN: 14:49:15  
25 Q Mr. Deason, can I have you read to 14:49:15

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|----------|---|----------|---|
| 1        | yourself the first bullet on page 2, Exhibit 2840. 14:49:18 | 1        | THE WITNESS: Yes. 14:52:06                                  |
| 2        | What do you understand that bullet to be 14:49:50           | 2        | THE REPORTER: Thank you. 14:52:06                           |
| 3        | discussing? 14:49:51  | 3        | BY MS. LIN: 14:52:06  |
| 4        | MR. LAHAD: Calling for speculation and 14:49:53             | 4        | Q Are you aware of Circuit City learning 14:52:09           |
| 5        | lacks foundation. 14:49:54                                  | 5        | about CRT finished product manufacturers cost of 14:52:12   |
| 6        | THE WITNESS: He is discussing that the 14:49:56             | 6        | manufacturing in other contexts besides this 14:52:15       |
| 7        | entry level price products that Thomson is 14:50:02         | 7        | document we just looked at? 14:52:17                        |
| 8        | offering are not at a competitive cost and 14:50:05         | 8        | MR. LAHAD: Objection, vague, misstates 14:52:20             |
| 9        | that others have that product and perhaps we 14:50:15       | 9        | the testimony. 14:52:21                                     |
| 10       | could leverage their more senior product 14:50:24           | 10       | MR. GRALEWSKI: Objection to form, to 14:52:22               |
| 11       | since we are going to be buying the other 14:50:28          | 11       | this question and the prior question. 14:52:25              |
| 12       | product from them. 14:50:30                                 | 12       | THE WITNESS: We would not know the cost 14:52:28            |
| 13       | It might become more important to other 14:50:32            | 13       | of manufacturing of the vendor and to some 14:52:31         |
| 14       | people. He says it is not his goal but it 14:50:34          | 14       | degree we might not care. What we care about 14:52:37       |
| 15       | might happen. 14:50:37                                      | 15       | is whether the costs they give us is 14:52:42               |
| 16       | BY MS. LIN: 14:50:38  | 16       | competitive. 14:52:46                                       |
| 17       | Q Does Circuit City generally have the 14:50:38             | 17       | Now, am I familiar with vendors 14:52:47                    |
| 18       | ability to leverage other vendors' product 14:50:40         | 18       | complaining that their costs are high and 14:52:52          |
| 19       | offerings in order to obtain better CRT finished 14:50:43   | 19       | that that makes their life tough, yes. 14:52:56             |
| 20       | product prices? 14:50:47                                    | 20       | BY MS. LIN: 14:52:58  |
| 21       | MR. LAHAD: Objection, vague. 14:50:48                       | 21       | Q Were there times during the relevant 14:53:01             |
| 22       | MR. GRALEWSKI: Objection, form. 14:50:49                    | 22       | period when Circuit City could not purchase as 14:53:04     |
| 23       | THE WITNESS: I would bring that down to 14:50:52            | 23       | many CRT finished products as it was seeking to? 14:53:08   |
| 24       | he's got some entry level product that he 14:51:00          | 24       | A I think that is highly likely. As new 14:53:12            |
| 25       | needs to buy and one guy's cost are higher 14:51:02         | 25       | products are introduced quite often the supply is 14:53:18  |
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| 1        | than the other guy's cost as far as quoted to 14:51:07      | 1        | I not adequate, and so for example, as I used 14:53:24      |
| 2        | him, so he is choosing between that 14:51:09                | 2        | earlier, when the 40 inch CRT was introduced, it 14:53:27   |
| 3        | The rest of this discussion talks about 14:51:13            | 3        | would be very likely that we were not getting all 14:53:32  |
| 4        | if I am having to buy that product from 14:51:17            | 4        | of them that we wanted to get, but I don't again 14:53:35   |
| 5        | these guys, I might want to buy the better 14:51:19         | 5        | know of a specific case of that. 14:53:39                   |
| 6        | product from these guys too. 14:51:23                       | 6        | Q The 40-inch CRT you are using as an 14:53:42              |
| 7        | BY MS. LIN: 14:51:24  | 7        | example, but not necessarily a true example? 14:53:45       |
| 8        | Q Did Circuit City typically learn about 14:51:27           | 8        | A Correct. Anything that is new supply 14:53:48             |
| 9        | CRT finished product manufacturers manufacturing 14:51:30   | 9        | tends to lag demand. 14:53:55                               |
| 10       | cost during its purchase negotiations? 14:51:34             | 10       | (Whereupon, Deposition Exhibit 2841 is marked for 14:53:59  |
| 11       | A No. 14:51:37  | 11       | Identification.) 14:53:59                                   |
| 12       | Q Are you aware, other than the document 14:51:37           | 12       | MS. LIN: I am going to mark as Exhibit 14:54:18             |
| 13       | you have just read, Exhibit 2840, of Circuit City 14:51:42  | 13       | 2841 a document Bates numbered CC 0534111. 14:54:20         |
| 14       | learning about CRT finished product manufacturers 14:51:46  | 14       | BY MS. LIN: 14:54:30  |
| 15       | prices as part of the negotiation process? 14:51:49         | 15       | Q Can you describe to me what this Exhibit 14:54:30         |
| 16       | MR. LAHAD: Objection, misstates 14:51:52                    | 16       | 2841 appears to you to be? 14:55:04                         |
| 17       | previous testimony. 14:51:54                                | 17       | A It appears to be an update from Danny 14:55:06            |
| 18       | THE WITNESS: Prices, again, I don't 14:51:55                | 18       | Caglin, the buyer, to Andrew Scholclapper who is 14:55:10   |
| 19       | know. Ask me again, I am sorry. 14:51:57                    | 19       | probably his senior buyer or I am not sure of the 14:55:13  |
| 20       | BY MS. LIN: 14:51:59  | 20       | exact title at the time, telling him about what is 14:55:17 |
| 21       | Q Sure. The bullet we just read in 14:51:59                 | 21       | going on with their discussions with Hitachi. 14:55:25      |
| 22       | Exhibit 2840 is discussing the vendor's costs of 14:52:02   | 22       | Q What concerns is Mr. Caglin raising 14:55:33              |
| 23       | manufacturing? 14:52:05                                     | 23       | about Hitachi? 14:55:35                                     |
| 24       | A (Non-verbalized response.) 14:52:06                       | 24       | MR. LAHAD: The document speaks for 14:55:38                 |
| 25       | THE REPORTER: Is that a yes? 14:52:06                       | 25       | itself. 14:55:40  |

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1 MR. GAWLEY: Assumes facts, speculative, 14:55:43  
2 lacks foundation. 14:55:43  
3 THE WITNESS: He is basically saying 14:55:52  
4 that the costs, that the margin on the 14:55:55  
5 Hitachi product is going to go down and that 14:55:58  
6 it is not go to be as competitive to other 14:56:03  
7 product. 14:56:06  
8 BY MS. LIN: 14:56:06  
9 Q Can you read Mr. Scholclapper's 14:56:09  
10 response? 14:56:11  
11 A "Thanks for the update." Well, there 14:56:11  
12 are a bunch of typos and so I will read it as what 14:56:13  
13 I think he is saying, which is, "If you have not 14:56:18  
14 done so already, please make sure Hitachi is aware 14:56:23  
15 of your planned actions pulling in front ads, 14:56:27  
16 potentially reducing store counts. They need to 14:56:28  
17 understand the consequences of their decisions." 14:56:33  
18 Q What do you understand Mr. Scholclapper 14:56:35  
19 to be saying? 14:56:37  
20 MR. LAHAD: Lacks foundation, calls for 14:56:39  
21 speculation. 14:56:41  
22 THE WITNESS: I would take it that he is 14:56:45  
23 saying that if the product is not going to be 14:56:46  
24 as competitive and if it is not going to 14:56:49  
25 deliver as much margin, then we don't want to 14:56:52

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1 sell as many. 14:56:55  
2 BY MS. LIN: 14:56:56  
3 Q So there were consequences for CRT 14:56:56  
4 finished product vendors who did not accommodate 14:56:59  
5 Circuit City's expected margins? 14:57:03  
6 MR. LAHAD: Objection, misstates the 14:57:06  
7 testimony. 14:57:07  
8 THE WITNESS: He's saying that they are 14:57:07  
9 not going to end up selling as much product 14:57:08  
10 and so therefore we're going to have to do 14:57:12  
11 these things in reaction to that and that 14:57:14  
12 they need to know that. 14:57:19  
13 BY MS. LIN: 14:57:20  
14 Q Circuit City could pull planned ads from 14:57:25  
15 CRT finished product vendors' product if those 14:57:28  
16 vendors refused to reduce their suggested 14:57:33  
17 advertised retail prices? 14:57:36  
18 MR. LAHAD: Misstates testimony, lacks 14:57:38  
19 foundation. 14:57:40  
20 MS. LIN: It's a question. I am not 14:57:41  
21 restating his testimony. 14:57:43  
22 MR. LAHAD: To the extent that you are 14:57:44  
23 relying on testimony, I think you're 14:57:44  
24 mistaken. 14:57:48  
25 THE WITNESS: I think the way you stated 14:57:51

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1 it makes it say, "If you do not do this, we 14:58:02  
2 will do that." 14:58:05  
3 What they are discussing is the fact 14:58:07  
4 that this product is not going to sell as 14:58:08  
5 much and it is not going to be as 14:58:10  
6 profitable. 14:58:13  
7 If it is not going to sell as much and 14:58:14  
8 it is not going to be profitable, then you 14:58:15  
9 don't advertise it as often and you don't 14:58:18  
10 carry it in as many stores and they need to 14:58:20  
11 understand that because they should not be 14:58:22  
12 surprised by that. 14:58:24  
13 BY MS. LIN: 14:58:27  
14 Q But generally speaking, not just in the 14:58:27  
15 example of Exhibit 2814, Circuit City could enact 14:58:30  
16 consequences to CRT finished product vendors that 14:58:37  
17 did not move their suggested retail prices? 14:58:39  
18 MR. LAHAD: Vague. 14:58:46  
19 MR. GRALEWSKI: Objection, form. 14:58:47  
20 THE WITNESS: The consequences are going 14:58:51  
21 to happen because, in general, if people 14:58:55  
22 don't react to the marketplace which is what 14:59:01  
23 this is talking about, then their product is 14:59:04  
24 going to not sell, so to say that there are 14:59:08  
25 consequences from Circuit City, the 14:59:16

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1 consequence is to Circuit City that the 14:59:19  
2 product is not going to sell, if the retail 14:59:21  
3 is going to go down, but the margin is going 14:59:26  
4 to down too, then there is impact to Circuit 14:59:27  
5 City on their profit. 14:59:32  
6 I think that that's as clear as I can 14:59:35  
7 answer it. We are not saying, "If you don't 14:59:37  
8 do this," I mean, they can choose do 14:59:43  
9 whatever they want, but then it is not going 14:59:48  
10 to sell, so we are going to stop buying it. 14:59:50  
11 BY MS. LIN: 14:59:54  
12 Q If a CRT finished product vendor 14:59:55  
13 increased its costs, would Circuit City change the 15:00:07  
14 retail price of the finished product in response? 15:00:11  
15 A They may. If the manufacturer's 15:00:15  
16 suggested retail price changed, then we are likely 15:00:18  
17 to, and if it did not, we are unlikely to. 15:00:25  
18 Q Do you recall any specific examples of 15:00:32  
19 that happening? 15:00:34  
20 A No. 15:00:34  
21 Q To the extent its cost was increased, 15:00:40  
22 would -- 15:00:42  
23 A I'm sorry, I have got to correct myself. 15:00:43  
24 The previous deposition, I was shown a letter 15:00:46  
25 where somebody had increase in costs. 15:00:50

36 (Pages 138 - 141)

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1 Q The previous deposition you are 15:00:55  
2 referring to the LCD case? 15:00:56  
3 A LCD, but it was not for CRT product. 15:00:58  
4 Q You are not aware of any instances this 15:01:00  
5 which CRT product prices were increased? 15:01:03  
6 A I am not aware. 15:01:06  
7 MR. GRALEWSKI: Can I have the court 15:01:17  
8 reporter read back the last question and 15:01:18  
9 answer? 15:01:20  
10 (Whereupon the record was read.) 15:01:20  
11 MR. LAHAD: Did you mean prices or 15:01:34  
12 costs? 15:01:35  
13 MS. LIN: I will keep prices. But why 15:01:38  
14 not ask the question as to costs. 15:01:41  
15 BY MS. LIN: 15:01:43  
16 Q Are you aware of any instances -- 15:01:43  
17 MR. LAHAD: Did you understand that 15:01:44  
18 question to be prices or costs? 15:01:45  
19 THE WITNESS: I understood it to be 15:01:47  
20 costs. I am sorry. 15:01:48  
21 BY MS. LIN: 15:01:49  
22 Q No, that's okay. 15:01:49  
23 A My answer was that it was based on our 15:01:51  
24 cost going up. 15:01:55  
25 Q You are not aware of any instances in 15:01:56

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1 which Circuit City's costs to purchase CRT 15:01:57  
2 finished products went up? 15:02:01  
3 A That is correct. 15:02:02  
4 Q If there was a decrease in Circuit 15:02:12  
5 City's costs to acquire a specific CRT finished 15:02:21  
6 products, would Circuit City decrease the price 15:02:23  
7 charged to the customer by that same amount? 15:02:30  
8 A Most likely not. We would reposition 15:02:33  
9 price based on change of the manufacturer's 15:02:45  
10 suggested retail price would be the primary reason 15:02:47  
11 for us to reposition the price that we are selling 15:02:50  
12 the product at. 15:02:53  
13 And furthermore, if you reduce the price 15:02:57  
14 by \$20, and you reduce the cost by \$20, you 15:03:00  
15 actually don't have the same margin. The math 15:03:04  
16 doesn't work that way. 15:03:08  
17 Q Would Circuit City typically move the 15:03:11  
18 price to the consumer by the same amount at which 15:03:17  
19 Circuit City's cost to acquire the CRT finished 15:03:21  
20 product moved? 15:03:25  
21 MR. GRALEWSKI: Objection, form. 15:03:26  
22 THE WITNESS: I believe I just answered 15:03:28  
23 that. 15:03:30  
24 BY MS. LIN: 15:03:31  
25 Q I thought you tagged it to margins, so I 15:03:32

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1 I was trying to clarify, putting aside a margin 15:03:34  
2 percentage, the dollar amount at which a CRT 15:03:36  
3 finished product cost to Circuit City, would that 15:03:39  
4 be the same dollar amount at which Circuit City 15:03:42  
5 would change its retail price to consumers? 15:03:45  
6 A Cost and our selling price still exist 15:03:49  
7 independently. You make the pricing decision 15:03:58  
8 based on what is competitive. 15:04:01  
9 If the vendor gives you a \$20 reduction 15:04:04  
10 in cost, but everybody is selling this at the same 15:04:07  
11 price that they always sold it for, and you are 15:04:11  
12 selling it at that and it is competitive, then you 15:04:14  
13 may take the money. 15:04:18  
14 It is profitable. 15:04:20  
15 If the vendor has said, and this is the 15:04:21  
16 more likely case where you have got a cost 15:04:24  
17 reduction, "If you have a price protection, more 15:04:27  
18 likely it used to be a \$349 manufactured suggested 15:04:29  
19 retail, it is now going to be \$299 suggested 15:04:32  
20 retail and here is your new cost." 15:04:36  
21 Q Did Circuit City use any type of 15:04:47  
22 benchmark pricing in its prices charged to 15:04:49  
23 consumers for instance tending to end products at 15:04:53  
24 99 cents? 15:04:55  
25 A Yes. 15:04:56

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1 Q And how did that benchmark pricing work? 15:04:57  
2 A The 99 cent was the standard ending for 15:05:00  
3 everything that you sold in the sort of the normal 15:05:05  
4 course of business. 15:05:11  
5 We had other endings that meant things, 15:05:12  
6 and I am probably going to get these wrong, but I 15:05:15  
7 will use them as the examples. 15:05:19  
8 97 cent, might say, "That is an item 15:05:21  
9 that was on sale," the 98 cent might mean that 15:05:23  
10 "that is a floor sample," and the 95 cent, and I 15:05:28  
11 am getting some of these, right, meant that it was 15:05:34  
12 a damaged product. 15:05:38  
13 Q If Circuit City decreased the price of a 15:05:56  
14 particular CRT finished product, would that have 15:06:00  
15 an effect on other CRT finished products in 15:06:03  
16 Circuit City's lineup at the time? 15:06:06  
17 MR. LAHAD: Objection, vague, as to 15:06:08  
18 affect. 15:06:11  
19 MR. GRALEWSKI: Objection, form. 15:06:11  
20 THE WITNESS: What do you mean by 15:06:13  
21 affect? 15:06:14  
22 BY MS. LIN: 15:06:16  
23 Q If a particular CRT finished product 15:06:17  
24 price decreases would that lead Circuit City to 15:06:23  
25 change the prices of any other CRT finished 15:06:26

37 (Pages 142 - 145)

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1 products it was selling at that time? 15:06:29  
2 A It might. 15:06:32  
3 Q Why's that? 15:06:34  
4 A Because the other products might stop 15:06:35  
5 selling. 15:06:38  
6 Q Would a price decrease in a particular 15:06:43  
7 CRT finished product prompt Circuit City to reduce 15:06:45  
8 prices of its other CRT finished products for 15:06:49  
9 sale? 15:06:52  
10 MR. LAHAD: Asked and answered. 15:06:53  
11 THE WITNESS: Yes, I was actually 15:06:54  
12 listening to see what was different. I don't 15:06:57  
13 hear anything different in the question. 15:06:59  
14 Maybe if you restate it, I can answer you. 15:07:05  
15 BY MS. LIN: 15:07:12  
16 Q We were saying that if a price decreased 15:07:12  
17 of one product, Circuit City might change its 15:07:14  
18 prices of other products? I want to clarify, 15:07:16  
19 would it change them to go down? 15:07:18  
20 A Yes, if the product was not selling 15:07:24  
21 because the other product had gone down in price 15:07:26  
22 then it would go down also. 15:07:31  
23 BY MS. LIN: 15:07:33  
24 Q A decrease in price of one CRT product 15:07:34  
25 was unlikely to cause Circuit City to increase the 15:07:35

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1 price of a different CRT product, is that right? 15:07:39  
2 MR. LAHAD: Misstates the testimony. 15:07:41  
3 THE WITNESS: Yes. 15:07:43  
4 MR. LAHAD: I am sorry, did you say was 15:07:53  
5 then likely or was unlikely? 15:07:53  
6 MS. LIN: Unlikely. 15:07:55  
7 BY MS. LIN: 15:07:56  
8 Q If a price change was to be implemented 15:08:03  
9 on a particular CRT finished product, how did that 15:08:07  
10 process work? 15:08:11  
11 A The buyers support team which had 15:08:12  
12 various names, it could be a category support, or 15:08:21  
13 a product manager, or a product specialist, the 15:08:25  
14 buyer would create the basic form that said, "The 15:08:28  
15 new price of this, we want to price our stores to 15:08:35  
16 this starting at this date," and that is all that 15:08:39  
17 would have to be done is that it would key in go 15:08:44  
18 out to all the stores. 15:08:47  
19 If there was a cost change at the same 15:08:49  
20 time that is handled differently. 15:08:53  
21 Q You said was a cost change to acquire a 15:08:58  
22 CRT finished product, would that information be 15:09:01  
23 related to the retail stores? 15:09:03  
24 A That information is available to them, 15:09:07  
25 but it would not be communicated to them unless it 15:09:10

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1 was significantly going to change sort of what 15:09:15  
2 they have been trained to do or what they have 15:09:22  
3 been selling. 15:09:24  
4 Q Were price changes, so that is price 15:09:26  
5 charged to consumers, implemented across all 15:09:29  
6 Circuit City retail stores at the same time? 15:09:34  
7 A Like 99.9 percent of the time they were. 15:09:36  
8 There were exceptions where you would say in this 15:09:40  
9 marketplace that price is not going to be 15:09:43  
10 competitive and so you would put a different price 15:09:46  
11 down. 15:09:49  
12 Q Were the same prices charged on Circuit 15:09:52  
13 City's website as it charged on its retail stores 15:09:59  
14 for CRT finished products? 15:10:02  
15 A The everyday pricing would have been the 15:10:05  
16 same, however you could have different promotions. 15:10:09  
17 It could be on sale in the stores and not be on 15:10:14  
18 sale on the web or vice versa. 15:10:17  
19 Q Was it the buyers that determined the 15:10:20  
20 web pricing as well? 15:10:23  
21 A The buyers determined the every day 15:10:24  
22 pricing, yes. 15:10:27  
23 Q The size of its inventory of CRT 15:10:28  
24 finished products impact Circuit City's prices it 15:10:30  
25 charged to consumers to purchase those products? 15:10:34

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1 A Yes. 15:10:38  
2 Q How so? 15:10:38  
3 A If we had an excess amount of inventory, 15:10:39  
4 then we might reduce the price to the consumer to 15:10:41  
5 increase sales. 15:10:45  
6 If we had a shortage of inventory, we 15:10:47  
7 may increase costs to the consumer because we are 15:10:49  
8 going to sell all that we own. 15:10:52  
9 Q Would Circuit City sometimes buy more 15:10:55  
10 inventory than usual if it felt that it was 15:10:58  
11 getting a good price on a CRT finished product? 15:11:09  
12 MR. LAHAD: Vague, lacks foundation. 15:11:03  
13 THE WITNESS: I am trying to sort of 15:11:17  
14 process the way usual. Yes, we would, and 15:11:17  
15 there's a difference in culture in about 15:11:24  
16 1995, 1996, 1997, that sort of stopped at the 15:11:28  
17 beginning of this where the buyers could buy 15:11:33  
18 a bulk of product and sit on it for a while. 15:11:38  
19 if they got an incredible deal. 15:11:41  
20 But as our supply chain got more 15:11:46  
21 sophisticated we were not allowed to do 15:11:51  
22 that, and so for the majority of this period 15:11:53  
23 of time, I would estimate that over 90 15:11:55  
24 percent time that we are talking about here 15:12:00  
25 the buyer could not buy in excess in that 15:12:03

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1 way. 15:12:09

2 BY MS. LIN: 15:12:10

3 Q Do you know why Circuit City changed its 15:12:11

4 policy with respect to whether buyers can purchase 15:12:14

5 excess CRT finished product inventory? 15:12:16

6 A Reduce risk. 15:12:19

7 Q Was that because Circuit City expected 15:12:23

8 the prices of CRT finished products to decline? 15:12:24

9 A No, it is because any product that you 15:12:27 *able*

10 buy has the risk of suddenly being not profit or 15:12:31

11 not competitive and now you own it and so it 15:12:36

12 doesn't matter that it was CRTs. Just any mass 15:12:42

13 product. 15:12:46

14 Q Did individual Circuit City retail 15:12:52

15 stores have the authority to change the sales 15:12:54

16 prices of CRT finished products? 15:12:57

17 A They could under very strict guidelines 15:13:00

18 and at some periods of time they were not allowed 15:13:04

19 to do so at all. 15:13:07

20 Q Do you know what time periods individual 15:13:13

21 stores were not allowed to change CRT finished 15:13:16

22 product prices? 15:13:18

23 A These type of decisions to give you an 15:13:20

24 example of a time when they were not allowed to 15:13:27

25 change them at all, I remember a Christmas, I 15:13:30

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1 I don't know which Christmas, where we said, "This 15:13:35

2 date on, no price changes. No reactions." 15:13:38

3 Q So from some Christmas going forward 15:13:54

4 individual stores were no longer allowed to change 15:13:56

5 their CRT finished product prices, am I 15:13:59

6 understanding you right? 15:14:01

7 MR. LAHAD: Misstates the testimony. 15:14:02

8 THE WITNESS: They are not allowed to 15:14:02

9 change any prices. 15:14:04

10 BY MS. LIN: 15:14:05

11 Q Specific to that one day or going 15:14:05

12 forward? 15:14:08

13 A For a short period of time, like the 15:14:08

14 final three weeks of the year or the final three 15:14:10

15 weeks before Christmas. 15:14:13

16 The only prices by the way that they 15:14:15

17 were allowed to change were a specific groups of 15:14:17

18 product that we said, "These products were going 15:14:20

19 to compete on. You will compete with certain 15:14:24

20 other retailers and if they are at this price in 15:14:28

21 print, for example, then you will price yours 15:14:32

22 while that ad ran, and when the ad is over, you 15:14:36

23 put it back up." 15:14:39

24 They were not able to control, what I 15:14:40

25 have been referring to, as their every day 15:14:43

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1 pricing. They were able to control their reaction 15:14:46

2 to competitors' pricing. 15:14:50

3 Q Did someone at Circuit City determine 15:14:52

4 which products would be in that category of 15:14:55

5 products whose prices might change in reaction to 15:14:58

6 competitor pricing? 15:15:00

7 A Yes. 15:15:01

8 Q How did that work? 15:15:02

9 A The buyers and other senior management 15:15:03

10 in merchandising would identify the key categories 15:15:07

11 that required reaction and CRTs would have always 15:15:12

12 been in that category because they are hardware 15:15:16

13 categories with significant pricing. Whereas, 15:15:21

14 something like a camera bag where they carried 50 15:15:25

15 of them, and they cost \$19, wouldn't be. 15:15:32

16 Q Were all CRT finished products subject 15:15:35

17 to price changes based on competitor prices? 15:15:39

18 MR. LAHAD: Vague. 15:15:44

19 THE WITNESS: Right. It would vary 15:15:44

20 based on the time that we are talking about 15:15:46

21 here. 15:15:50

22 As CRT was the largest part of 15:15:52

23 television probably at the beginning of the 15:15:55

24 cycle, I suspect all CRT was involved. 15:15:58

25 At the end, as CRT was not as visible 15:16:01

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1 and wasn't advertised as much, wasn't as 15:16:08

2 high priced, or et cetera, then I am sure 15:16:11

3 that there were exceptions that said we are 15:16:15

4 only going to do the ones above a certain 15:16:17

5 price or certain size or something like that 15:16:20

6 and it may have even been excluded. 15:16:21

7 But television in general was our 15:16:24

8 number one business and so in general we 15:16:28

9 were very competitive on television. 15:16:31

10 BY MS. LIN: 15:16:34

11 Q Was Circuit City offering similar 15:16:35

12 ability to its retail stores to change their 15:16:37

13 prices in reaction to competitors in CRT monitor 15:16:40

14 sales? 15:16:44

15 A We were a little more careful with our 15:16:46

16 computer product because the overall profitability 15:16:49

17 of computers is typically lower than other 15:16:55

18 products and the visibility was a little bit 15:17:01

19 lower. 15:17:04

20 Having said that, I am sure that there 15:17:05

21 were times when they were included, but it's not 15:17:07

22 the type of category that is dominant for Circuit 15:17:11

23 City. 15:17:16

24 I would say in that case it is probably 15:17:19

25 the opposite, that most of the time they wouldn't 15:17:22

| Page 154 |   | Page 156 |   |
|----------|---|----------|---|
| 1        | I have been included. 15:17:26                              | 1        | I was involved with highly competitive 15:20:38             |
| 2        | (Whereupon, Deposition Exhibit 2842 is marked for 15:17:26  | 2        | marketplaces, many of these highly competitive 15:20:42     |
| 3        | Identification.) 15:17:26                                   | 3        | type environments, the competitor would price at 15:20:52   |
| 4        | MS. LIN: I am going to mark a document 15:17:34             | 4        | one price, but as soon as you said hello they 15:20:57      |
| 5        | beginning Bates No. CC 0389749 as Exhibit 15:17:36          | 5        | would offer you a lower price, and so by being 15:21:00     |
| 6        | 2842. 15:17:42  | 6        | priced at one price and not being aware of that 15:21:04    |
| 7        | BY MS. LIN: 15:18:17  | 7        | and not having any sort of reaction to that we 15:21:07     |
| 8        | Q Are you familiar with the manager's 15:18:17              | 8        | were losing sales. 15:21:10                                 |
| 9        | special price program referenced in Exhibit 2842? 15:18:19  | 9        | We were particularly losing it for very 15:21:12            |
| 10       | A This is a reminder that there is such a 15:18:24          | 10       | expensive television and this is Big Screen which 15:21:18  |
| 11       | program and looking at this is a reminder that 15:18:26     | 11       | typically for Circuit City is talking about 15:21:21        |
| 12       | there is such a program existed. I was not 15:18:29         | 12       | projection sets. 15:21:24                                   |
| 13       | actively involved in it. 15:18:32                           | 13       | It is talking about the various types of 15:21:26           |
| 14       | BY MS. LIN: 15:18:34  | 14       | projection, the type of sets, and typically, would 15:21:31 |
| 15       | Q Do you know how the manager special 15:18:34              | 15       | not be CRT unless it was a 40 inch or something 15:21:32    |
| 16       | price program worked? 15:18:36                              | 16       | that was included. 15:21:36                                 |
| 17       | A No. 15:18:37  | 17       | This is primarily about any product that 15:21:37           |
| 18       | Q Looking page 2, there is a reference to 15:18:39          | 18       | was \$2,000 to \$3,000, and they would have a drop 15:21:41 |
| 19       | a low-price guaranty. Do you know what Circuit 15:18:46     | 19       | price that was significant. 15:21:44                        |
| 20       | City's low price guaranty was? 15:18:49                     | 20       | So it's a \$3,000 product and you say, 15:21:46             |
| 21       | A Yes. 15:18:50   | 21       | "hello," and it now \$2,800 and we don't get the 15:21:49   |
| 22       | Q What was that? 15:18:51                                   | 22       | sale. 15:21:54  |
| 23       | A We would match competitors advertised 15:18:53            | 23       | That is what the manager's special 15:21:55                 |
| 24       | pricing, so that we would sell you the product at 15:18:58  | 24       | pricing was created to try to combat was how do we 15:21:58 |
| 25       | the price that competitors advertised it at, and 15:19:00   | 25       | deal with that because we were losing sales. 15:22:03       |
| Page 155 |   | Page 157 |   |
| 1        | if you bought the product from us, and then the 15:19:04    | 1        | Q Would you turn to the next page. 15:22:12                 |
| 2        | product was advertised for less, we would refund 15:19:08   | 2        | A It does say Big Tube, by the way, on 15:22:14             |
| 3        | the difference between what you paid and what the 15:19:11  | 3        | that same page. There is some specific Big Tube 15:22:18    |
| 4        | ad price was plus 10 percent, the difference. 15:19:15      | 4        | in here and Tube would have been CRT. 15:22:21              |
| 5        | Q Do you know when that low-price guaranty 15:19:19         | 5        | Q Thank you. So on the page ending Bates 15:22:24           |
| 6        | program was in place? 15:19:21                              | 6        | No. 57, will you read to yourself the paragraph 15:22:24    |
| 7        | A Long before this period of time that we 15:19:24          | 7        | beginning with, "Let me take a moment." 15:22:31            |
| 8        | are talking about. It goes back to my beginning. 15:19:28   | 8        | A 57? Read it to myself? 15:22:38                           |
| 9        | There was a low-price program when I started at 15:19:31    | 9        | Q Yes, just familiarize yourself with that 15:22:48         |
| 10       | Circuit City in 1980. 15:19:34                              | 10       | paragraph. Do you see where this training 15:22:50          |
| 11       | Q Was that program when you started the 15:19:36            | 11       | document says, "We shop other retailers as 15:23:19         |
| 12       | same as the low-price guaranty program in place in 15:19:38 | 12       | customers on a regular basis and the prices you 15:23:21    |
| 13       | 1996? 15:19:44  | 13       | see here are their consistent final drop prices 15:23:25    |
| 14       | A I believe so, but there were changes to 15:19:46          | 14       | they give us." 15:23:28                                     |
| 15       | that low-price program sometime during this 15:19:48        | 15       | A Yes. 15:23:28   |
| 16       | period. 15:19:54  | 16       | Q What does that mean? 15:23:29                             |
| 17       | Q I direct your attention to the page 15:20:05              | 17       | A We shop other retailers' customers on a 15:23:30          |
| 18       | ending in Bates Number 56. There is a little 15:20:07       | 18       | regular basis. I don't mean to be smart, but 15:23:33       |
| 19       | ease in the left hand margin that says, 15:20:20            | 19       | that's what it means is that we go out like if we 15:23:36  |
| 20       | "Anticipate all customers shopping in a drop price 15:20:22 | 20       | were a customer to try to buy the product to find 15:23:41  |
| 21       | environment." Do you know what that term "drop 15:20:26     | 21       | out what other guy is selling it for. 15:23:43              |
| 22       | price environment" means? 15:20:27                          | 22       | Q So the final drop price would be 15:23:46                 |
| 23       | A That is actually a remainder of what the 15:20:29         | 23       | discussing with the other retailer what lower than 15:23:49 |
| 24       | manager's specials program was created for. 15:20:32        | 24       | sticker price a buyer could receive? 15:23:53               |
| 25       | Going back to one of my positions where 15:20:35            | 25       | MR. LAHAD: Misstates the testimony. 15:23:57                |

40 (Pages 154 - 157)

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| Page 158 |   |          | Page 160 |  |          |
|----------|---|----------|----------|--|----------|
| 1        | THE WITNESS: Right.                               | 15:23:59 | 1        | Q Did Circuit City tend to sell products           | 15:26:18 |
| 2        | MS. LIN: Let me ask it this way.                  | 15:23:59 | 2        | that were in high demand as loss leaders?          | 15:26:22 |
| 3        | BY MS. LIN:                                       | 15:23:59 | 3        | A We created high demand by selling                | 15:26:27 |
| 4        | Q When you are discussing final drop              | 15:24:00 | 4        | products at a lower price, but if I understood you | 15:26:34 |
| 5        | prices from a competitor, what does that mean?    | 15:24:03 | 5        | correctly, to say these are high demand products   | 15:26:41 |
| 6        | A What it says is that we go to a                 | 15:24:07 | 6        | that we are trying to sell below costs, that would | 15:26:44 |
| 7        | competitor and we go as a customer and see what   | 15:24:10 | 7        | not be why we sold them below costs.               | 15:26:46 |
| 8        | the real prices they are offering that customer   | 15:24:16 | 8        | MR. LAHAD: Is that question directed to            | 15:26:51 |
| 9        | and then we are pricing to that price.            | 15:24:19 | 9        | products generally or just CRT finished            | 15:26:52 |
| 10       | Q The real price could be something other         | 15:24:22 | 10       | products?  | 15:26:53 |
| 11       | than the advertised or sticker price?             | 15:24:24 | 11       | BY MS. LIN:  | 15:26:53 |
| 12       | A The competitor's real price is something        | 15:24:29 | 12       | Q To CRT finished products. Sorry.                 | 15:26:54 |
| 13       | other than what they have got tagged.             | 15:24:32 | 13       | A Right.   | 15:26:56 |
| 14       | Q Circuit City would act as a customer in         | 15:24:37 | 14       | MR. LAHAD: Is that how you understood              | 15:26:58 |
| 15       | order to find out what that real lower price was  | 15:24:39 | 15       | the question?                                      | 15:27:00 |
| 16       | offered by a competitor?                          | 15:24:42 | 16       | THE WITNESS: Yes.                                  | 15:27:01 |
| 17       | A Yes.  | 15:24:43 | 17       | BY MS. LIN:  | 15:27:03 |
| 18       | Q Do you see anything wrong with that             | 15:24:52 | 18       | Q When Circuit City sold CRT finished              | 15:27:05 |
| 19       | practice of acting as a customer at your          | 15:24:54 | 19       | products below cost, did the person setting the    | 15:27:09 |
| 20       | competitor's store?                               | 15:24:57 | 20       | price know that they were setting it below cost?   | 15:27:12 |
| 21       | MR. LAHAD: Objection, scope. You are              | 15:24:59 | 21       | A The buyer would know, yes.                       | 15:27:15 |
| 22       | asking him personally if there is anything        | 15:25:00 | 22       | Q Could an individual store set a CRT              | 15:27:20 |
| 23       | wrong with that, a 30(b)(6) witness? I don't      | 15:25:02 | 23       | finished product sale below cost without realizing | 15:27:22 |
| 24       | know.   | 15:25:04 | 24       | it was doing so?                                   | 15:27:25 |
| 25       | MR. ROSS: Beyond the scope of the                 | 15:25:07 | 25       | MR. GRALEWSKI: Objection, form.                    | 15:27:28 |
| Page 159 |   |          | Page 161 |  |          |
| 1        | 30(b)(6).   | 15:25:08 | 1        | THE WITNESS: They had the information              | 15:27:30 |
| 2        | MR. GRALEWSKI: Objection, form.                   | 15:25:10 | 2        | to know what the costs was.                        | 15:27:34 |
| 3        | THE WITNESS: I know of no other way to            | 15:25:12 | 3        | BY MS. LIN:  | 15:27:36 |
| 4        | stay competitive.                                 | 15:25:14 | 4        | Q Could prices ever appear to be below             | 15:27:41 |
| 5        | BY MS. LIN:                                       | 15:25:15 | 5        | cost, but actually not truly be below cost, but    | 15:27:44 |
| 6        | Q Then to determine the prices that your          | 15:25:16 | 6        | when factored in rebates or other vendor funding?  | 15:27:49 |
| 7        | competitors are selling their products at?        | 15:25:19 | 7        | MR. LAHAD: Objection, lacks foundation,            | 15:27:54 |
| 8        | A Yes.  | 15:25:20 | 8        | vague.   | 15:27:55 |
| 9        | Q Do you know if Circuit City ever used           | 15:25:22 | 9        | THE WITNESS: I would answer that they              | 15:28:00 |
| 10       | CRT finished products as loss leaders during the  | 15:25:24 | 10       | are still below costs. Do you have funds           | 15:28:02 |
| 11       | relevant time period?                             | 15:25:28 | 11       | that might make your overall profitability         | 15:28:05 |
| 12       | A By "loss leader" you would mean you sold        | 15:25:31 | 12       | better, yes, but they are still below costs.       | 15:28:11 |
| 13       | it for below cost?                                | 15:25:34 | 13       | BY MS. LIN:  | 15:28:15 |
| 14       | Q However that term might have been used          | 15:25:37 | 14       | Q Given how Circuit City defines cost?             | 15:28:16 |
| 15       | by Circuit City.                                  | 15:25:39 | 15       | A Right.   | 15:28:19 |
| 16       | A No, that would be the definition that I         | 15:25:40 | 16       | Q Are you aware of laws in certain states          | 15:28:20 |
| 17       | would use if we did our very best and never sold  | 15:25:43 | 17       | that prohibit below cost sales?                    | 15:28:21 |
| 18       | products below what we paid for it but yes there  | 15:25:49 | 18       | MR. LAHAD: Objection, scope.                       | 15:28:25 |
| 19       | were times we did do so.                          | 15:25:53 | 19       | MR. ROSS: Hold on a second. If you're              | 15:28:28 |
| 20       | Q Do you know how Circuit City selected           | 15:25:54 | 20       | asking that as a 30(b)(6) witness, then no,        | 15:28:28 |
| 21       | the CRT finished products it would sell as loss   | 15:25:55 | 21       | he is not going to answer. That is well            | 15:28:31 |
| 22       | leaders?  | 15:26:00 | 22       | beyond the scope.                                  | 15:28:33 |
| 23       | A They could choose ones that they thought        | 15:26:01 | 23       | BY MS. LIN:  | 15:28:34 |
| 24       | were effective in advertising or that they had an | 15:26:06 | 24       | Q Do you know if Circuit City would raise          | 15:28:35 |
| 25       | excess inventory on for whatever reason.          | 15:26:10 | 25       | prices at any time to make up for below cost sales | 15:28:37 |

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1 that occurred during another time period? 15:28:41  
2 MR. LAHAD: Vague as to when you say "at 15:28:46  
3 another time period." Are you talking about 15:28:47  
4 a time period other than the relevant time 15:28:49  
5 period we are talking about? 15:28:52  
6 BY MS. LIN: 15:28:52  
7 Q No. So if a low-cost sale occurred -- 15:28:52  
8 No. If a below-cost sale occurred at one time, 15:28:55  
9 would Circuit City ever at a different point in 15:29:03  
10 time than when that low sale occurred raise prices 15:29:06  
11 to make up for the low cost incurred during the 15:29:09  
12 low-cost sale? 15:29:12  
13 MR. LAHAD: Vague. 15:29:14  
14 THE WITNESS: Right, that scenario 15:29:15  
15 doesn't sound viable because you still have 15:29:17  
16 to have the product priced at a competitive 15:29:20  
17 price. So we are not going to price above 15:29:23  
18 the competitive level. 15:29:26  
19 We are not going to price above a 15:29:28  
20 manufacturer's suggested retail price with 15:29:30  
21 the hopes that that we sell a couple that 15:29:32  
22 make the margin because you are not going to 15:29:34  
23 sell them. 15:29:36  
24 BY MS. LIN: 15:29:40  
25 Q Do you recall Circuit City using any 15:29:41

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1 thirty-party companies to provide information to 15:29:47  
2 it about the CRT finished product market? 15:29:49  
3 MR. LAHAD: Vague. 15:29:56  
4 THE WITNESS: Yes. 15:29:59  
5 BY MS. LIN: 15:30:00  
6 Q Which third-party companies? 15:30:02  
7 A We used NPD. We used CEA. We also used 15:30:04  
8 other forecasters like Forrester for various 15:30:14  
9 times. I don't know whether CRT would have been 15:30:18  
10 specific to that. 15:30:21  
11 And that is the overall market is, the 15:30:25  
12 type, are you talking about the selling market, 15:30:27  
13 then that is what I have answered for. 15:30:32  
14 Q What types of information did these 15:30:35  
15 companies provide to Circuit City about CRT 15:30:37  
16 finished product market? 15:30:40  
17 A Typically, and CEA is what they call 15:30:43  
18 "sell in data," NPD would sell <sup>was</sup> ~~sell~~ <sup>through</sup> ~~data~~ 15:30:48  
19 neither were all inclusive. 15:30:52  
20 You could only use them as indicators. 15:30:55  
21 They were not 100 percent accurate. 15:30:58  
22 It would provide the size of the market, 15:31:02  
23 so CRT, 13-inch TVs, are 2 million sales, units a 15:31:05  
24 year, it would give you the forecast of what it is 15:31:18  
25 going to be for usually a rolling three years kind 15:31:24

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1 of thing, but sometimes less. 15:31:29  
2 It might give you an average selling 15:31:32  
3 price. It could depending on which company you 15:31:34  
4 are working with, it might give you the share of 15:31:50  
5 market for a model or a brand, so Sony has 50 15:31:53  
6 percent of the market, or this specific product 15:32:00  
7 has 6 percent of the market. 15:32:02  
8 Q Do you know how Circuit City made use of 15:32:05  
9 the information it was obtaining from these 15:32:07  
10 third-party companies about the CRT finished 15:32:09  
11 product market? 15:32:12  
12 A We used it for budgeting processes. We 15:32:13  
13 used it for forecasting of our inventory 15:32:15  
14 processes, and now we used it as sort of a report 15:32:19  
15 card on how we are doing versus others. We used 15:32:23  
16 it as helping us to decide the size of our 15:32:26  
17 programs or our assortments. 15:32:31  
18 Q Who were Circuit City's competitors 15:32:35  
19 during the relevant time period? 15:32:38  
20 A I used to joke, "It is everybody." But 15:32:41  
21 the biggest competitors for consumer electronics 15:32:44  
22 during this period of time would have been Best 15:32:48  
23 Buy, Wal-Mart, Amazon, the sort of the three 15:32:50  
24 biggies, and then you also had Target and we had 15:32:58  
25 regional competitors that varied by marketplace 15:33:06

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1 and there are dozens of those. 15:33:09  
2 Q Were there any competitors that Circuit 15:33:15  
3 City considered particularly significant in the 15:33:17  
4 CRT finished product market? 15:33:20  
5 A Because Best Buy was the other large 15:33:22  
6 consumer electronics store, they were clearly a 15:33:28  
7 focus, but both Wal-Mart and Amazon market share 15:33:29  
8 for consumer electronics grew over this period of 15:33:37  
9 time that we are talking about, so like in 1995, 15:33:40  
10 maybe Amazon was not a big deal, but by 2007, they 15:33:45  
11 were a huge issue. 15:33:49  
12 Q Were there any positions at Circuit City 15:33:53  
13 responsible for monitoring the CRT finished 15:33:57  
14 product costs to consumers charged by Circuit 15:33:59  
15 City's competitors? 15:34:03  
16 A You just asked me if we had anybody that 15:34:06  
17 monitored the cost that other people had? 15:34:09  
18 Q I said cost to consumer, so the prices, 15:34:12  
19 I am sorry, we are using those interchangeably? 15:34:15  
20 A Now we are on the other side. 15:34:17  
21 Q Yes, now we are on the other side. Were 15:34:19  
22 there any people at Circuit City that were 15:34:22  
23 responsible for monitoring the prices Circuit 15:34:23  
24 City's competitors charged to customers? 15:34:27  
25 A You could argue that everybody in 15:34:30

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1 merchandise was responsible and everybody in sales 15:34:32  
2 was responsible because you need to have that 15:34:35  
3 information to be competitive and just know what 15:34:37  
4 is going on around you. 15:34:41  
5 Specifically, the people who do ads 15:34:43  
6 which is sometimes as an ad manager, and sometimes 15:34:52  
7 it was the buyer, and sometimes it was as product 15:34:54  
8 specialist, and so on, would keep track of what 15:34:57  
9 prices our competitors advertised at and we would 15:34:59  
10 react to those ad prices. 15:35:05  
11 Their everyday pricing that was out 15:35:10  
12 there in the field, Best Buy and Wal-Mart, and so 15:35:13  
13 on, they tended to do the same thing we did which 15:35:17  
14 is to price nationally. 15:35:22  
15 As a buyer you could go out and shop 15:35:25  
16 your own product and see what the other guy was 15:35:28  
17 selling the product for individually. 15:35:31  
18 But we also had people as we have talked 15:35:34  
19 about that would go out and visit our competitors 15:35:37  
20 and look at what their pricing is and communicate 15:35:41  
21 that back to the merchandising team to decide if 15:35:46  
22 we are going to react to it. 15:35:52  
23 Q Was that a specific role or job title 15:35:54  
24 that someone went out to shop competitors' prices? 15:35:57  
25 A No. We used everybody that was in the 15:36:01

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1 stores would shop, so no, there wasn't a single 15:36:04  
2 title. 15:36:11  
3 Q Did Circuit City gather information 15:36:16  
4 about its competitor's discounts? 15:36:22  
5 A As I said, if the competitor ran a sale, 15:36:27  
6 we tracked that very closely because they are very 15:36:31  
7 visible and it is easy to see and it has an 15:36:35  
8 impact. 15:36:39  
9 If they discounted their product on the 15:36:42  
10 floor, then it is less visible and hopefully one 15:36:46  
11 of our standard reports catches that information, 15:36:48  
12 again, we probably would not react to it if it is 15:36:54  
13 a short term type of a thing, but yes. 15:36:58  
14 Q You referenced a standard report, what 15:37:02  
15 were those? 15:37:05  
16 A I am sorry. I think I would have to 15:37:06  
17 have it read back to me to make sure. 15:37:13  
18 MR. ROSS: You're missing a word. 15:37:16  
19 BY MS. LIN: 15:37:16  
20 Q Maybe instead, standard shopping report? 15:37:19  
21 MR. ROSS: There you go. 15:37:21  
22 THE WITNESS: Right, so we had shopping. 15:37:21  
23 They would go out, and say, "These are the 15:37:24  
24 prices that we found," and communicate that 15:37:28  
25 back. "Here are the prices that are lower 15:37:31

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1 than us," we call that shopping report. 15:37:34  
2 BY MS. LIN: 15:37:36  
3 Q How frequently were shopping reports 15:37:36  
4 drafted? 15:37:38  
5 A Typically, if you were doing them at 15:37:40  
6 all, they would be on a weekly basis, but there 15:37:43  
7 were periods where you did not do them, as I said, 15:37:48  
8 because we were not going to do anything with 15:37:50  
9 them, so why waste people's time? 15:37:52  
10 Again not only would Christmas time be 15:37:54  
11 so hectic that people do not go from store to 15:38:00  
12 store as often, but you also don't have any people 15:38:02  
13 that are not busy, so you cannot send them out. 15:38:04  
14 Q Were shopping reports created throughout 15:38:10  
15 the relevant period? 15:38:12  
16 A Yes. 15:38:14  
17 Q Did Circuit City ever use customer 15:38:21  
18 surveys to monitor its competitors' prices? 15:38:23  
19 MR. LAHAD: During the relevant time 15:38:28  
20 period for CRT finished products? 15:38:30  
21 MS. LIN: Yes. 15:38:32  
22 THE WITNESS: I don't know of any cases 15:38:33  
23 where we used it to monitor retail prices, 15:38:34  
24 no. 15:38:38  
25 MS. LIN: Do you want to take a short 15:38:44

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1 break or keep going? 15:38:44  
2 MR. ROSS: Let's take a break. 15:38:47  
3 MS. LIN: Let's take a short break. 15:38:48  
4 THE VIDEOGRAPHER: The time is 15:38:49  
5 approximately 3:38 p.m. and we are off the 15:38:49  
6 record. 15:38:51  
7 (Whereupon, a break in the proceedings commenced 15:39:08  
8 at 3:38 p.m. and on resuming at 3:50 p.m.) 15:39:08  
9 THE VIDEOGRAPHER: The time is 15:50:21  
10 approximately 3:50 p.m. and we are back on 15:50:21  
11 the record. 15:50:25  
12 (Whereupon, Deposition Exhibit 2843 is marked for 15:50:28  
13 identification.) 15:50:28  
14 MS. LIN: I am going to mark another 15:50:28  
15 document for you, I am marking Exhibit 2843, 15:50:29  
16 a document Bates labeled CC 0021806. 15:50:34  
17 BY MS. LIN: 15:50:40  
18 Q Are you familiar with the pricing 15:50:40  
19 process described on the first page of Exhibit 15:51:24  
20 2843? 15:51:26  
21 A I am familiar with many such documents. 15:51:29  
22 Q Do you know when this pricing process 15:51:34  
23 was adopted by Circuit City? 15:51:38  
24 MR. LAHAD: Objection, assumes facts. 15:51:40  
25 MS. LIN: Strike that. 15:51:43

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1 BY MS. LIN: 15:51:43  
2 Q Was a pricing process of this kind in 15:51:43  
3 place at Circuit City? 15:51:47  
4 A Yes, and to answer your question about 15:51:50  
5 when, I do not know when this was produced. The 15:51:54  
6 reason why I said many such documents is because 15:52:03  
7 this would change. 15:52:05  
8 Q What was the pricing process here 15:52:08  
9 generally referring to? 15:52:11  
10 A This is referring to how the everyday 15:52:13  
11 pricing is set and who is going to provide 15:52:19  
12 information and input on any other changes that 15:52:23  
13 need to be done. 15:52:26  
14 Q Were there specific employees whose job 15:52:30  
15 title was market leader? 15:52:33  
16 A Yes, for this time period. 15:52:37  
17 Q Was that the job title, market leader? 15:52:42  
18 A I believe what they are referring to is 15:52:47  
19 the — No, I am sorry. I think what we are 15:52:50  
20 referring to is a person that has been designated 15:53:04  
21 in a market to be a market leader, this would be a 15:53:09  
22 store manager or a division merchandise manager 15:53:12  
23 generally. 15:53:16  
24 Q So market leader was not a full time 15:53:16  
25 position. It was an assignment? 15:53:19

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1 A Yes. 15:53:20  
2 Q What about pricing coordinator, was that 15:53:21  
3 a particular position at Circuit City at any time? 15:53:25  
4 A Yes, there were pricing coordinators at 15:53:29  
5 various times. 15:53:34  
6 Q Was pricing coordinator a job title used 15:53:34  
7 by Circuit City? 15:53:38  
8 A Yes. 15:53:39  
9 Q Can you recall anyone that held a 15:53:42  
10 pricing coordinator position that related to CRT 15:53:44  
11 finished products? 15:53:47  
12 A This is a pricing coordinator in the 15:53:48  
13 field, so this is a specific person who would have 15:53:51  
14 worked in a store that would have been for 15:53:54  
15 reporting to the market leader, as it says, that 15:53:58  
16 would go out into those shops. I can't name a 15:54:00  
17 person who had that position. 15:54:05  
18 Q Would that be a full-time position doing 15:54:06  
19 the duties described in the pricing coordinator 15:54:08  
20 box per store? 15:54:12  
21 A No, not per store. Per market. 15:54:18  
22 Q Per market. What constituted a market 15:54:21  
23 by that definition? 15:54:24  
24 A A market would be an area that will be 15:54:26  
25 determined by the ad market, so it would have been 15:54:32

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1 where the newspaper has an influence, 15:54:37  
2 predominantly large cities, small cities may not 15:54:41  
3 have had a market leader and they certainly would 15:54:46  
4 have had a pricing coordinator. 15:54:51  
5 Q Turn to the next page. If you look at a 15:54:53  
6 market leader role description, the second row 15:55:00  
7 second column, do you know what the acronym TMI 15:55:05  
8 means? 15:55:09  
9 A "Total" something "Income," but 15:55:17  
10 basically, it is profit dollars. By the way, it 15:55:22  
11 says, "market leaders are either a GM, a DM or 15:55:32  
12 store manager." 15:55:37  
13 Q I see, and GM or DM mean general manager 15:55:37  
14 and district manager respectively? 15:55:42  
15 A Correct. 15:55:45  
16 Q Are you familiar with the acronym PSB? 15:55:47  
17 A Yes. 15:55:55  
18 Q What does PSB mean? 15:55:56  
19 A Program strategy book. 15:55:57  
20 Q What was the program strategy book? 15:56:02  
21 A The program strategy book was the 15:56:05  
22 store's weekly. They got one on a weekly basis. 15:56:08  
23 It would say, "Here are all the products that you 15:56:17  
24 carry. Here are the prices that you are to price 15:56:22  
25 them at on the floor," and it would also include 15:56:24

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1 data like store cost and it will include sales 15:56:28  
2 data. 15:56:34  
3 Q Do you know the acronym CMB? 15:56:36  
4 A Where is that used here? CBM was our 15:56:41  
5 acronym for class brand model. 15:56:52  
6 Q So that is CBM. So what is class brand 15:56:56  
7 model? 15:56:58  
8 A Class would be like products all grouped 15:56:58  
9 together. So they are a television, 13-inch TVs 15:57:07  
10 might be a class, and then the brand and then the 15:57:14  
11 specific model number 15:57:18  
12 Q Each CRT finished products could be 15:57:19  
13 defined with its CMB? 15:57:22  
14 A Yes, CBM, yes. 15:57:25  
15 Q CBM, thank you. On that page ending in 15:57:26  
16 Dates Number 07, the one that you were telling me. 15:57:32  
17 A Oh, there it is. 15:57:38  
18 Q Under market leader and then market 15:57:40  
19 Level CTC? 15:57:44  
20 A Yes. 15:57:46  
21 Q It says, "Competitively prices market to 15:57:49  
22 focus competitors." Is focus competitors a term 15:57:52  
23 you are familiar with? 15:57:55  
24 A Yes. 15:57:56  
25 Q What does that mean? 15:57:57

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1 A It means those that we have chosen to 15:57:58  
2 react to as we discussed earlier, the key 15:58:01  
3 competitors. 15:58:07  
4 Q Circuit City selected key focus 15:58:10  
5 competitors to react to in terms of changing its 15:58:12  
6 product prices? 15:58:16  
7 A Yes. 15:58:17  
8 Q Are you familiar with the phrase 15:58:22  
9 strategy shops? 15:58:24  
10 A Yes. 15:58:24  
11 Q What does that mean? 15:58:25  
12 A It basically means that you are trying 15:58:28  
13 to understand what the store does to make the 15:58:31  
14 sale. 15:58:40  
15 Do they have a strategy that they are 15:58:41  
16 going to say, just like our strategies, that they 15:58:43  
17 are, "Going to sell the stereo TVs, and by the 15:58:51  
18 way, we have more stereo TVs than Circuit City 15:58:55  
19 does." 15:58:58  
20 Q A strategy shop is an effort to learn 15:58:59  
21 what strategies a competitor of Circuit City's is 15:59:01  
22 using to sell products? 15:59:03  
23 A Yes. 15:59:05  
24 Q And Circuit City used strategy shops to 15:59:06  
25 learn that information? 15:59:09

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1 A Mostly, the buyer would do those sort of 15:59:10  
2 things because they tend to be not as obvious. 15:59:15  
3 But, yes, we would try to understand. 15:59:20  
4 The strategy might just simply be Circuit City has 15:59:22  
5 commission salespeople and that is what Best Buy 15:59:29  
6 would tell every single person. 15:59:31  
7 "Our people are non-commission. They 15:59:35  
8 are lying to you," so you need to know that so you 15:59:35  
9 would be able to overcome an objection that your 15:59:39  
10 customer might have. 15:59:42  
11 Q Do you know what tactical shops were? 15:59:44  
12 A The tacticals are the specific prices, I 15:59:47  
13 believe. 15:59:53  
14 Q Circuit City shopped its competitors to 15:59:54  
15 find out its price information through tactical 15:59:59  
16 shops? 16:00:01  
17 A Where are you reading it and I will see 16:00:04  
18 if I can -- 16:00:06  
19 Q So under market leader shopping process? 16:00:06  
20 A Yes, basically saying, "Go out and find 16:00:16  
21 out what the prices are." That is your tactical 16:00:20  
22 shop. 16:00:24  
23 "Go out and find out what they are 16:00:24  
24 saying to make people buy from them and instead 16:00:25  
25 buy from you." 16:00:28

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1 Q Going back to the box you were looking 16:00:31  
2 at previously, no market leader, market level 16:00:33  
3 CTCs, what does it mean for Circuit City to 16:00:36  
4 competitively price the market? 16:00:39  
5 A It means to react to the focus 16:00:42  
6 competitor by changing your price to be 16:00:46  
7 competitive with your focus competitors. 16:00:50  
8 Q Did Circuit City think it could best set 16:00:54  
9 competitive prices by knowing the prices charged 16:00:57  
10 by its competitors in the market? 16:00:59  
11 MR. LAHAD: Again talking about CRT 16:01:08  
12 finished products during the relevant time 16:01:14  
13 period? 16:01:17  
14 MS. LIN: Generally speaking. 16:01:17  
15 THE WITNESS: Ask again. Sorry. 16:01:19  
16 BY MS. LIN: 16:01:22  
17 Q Did Circuit City think it could best set 16:01:23  
18 competitive prices by knowing the prices charged 16:01:26  
19 by its competitors in the marketplace? 16:01:28  
20 A I think that's the definition of 16:01:31  
21 competitive prices, so by definition, yes. 16:01:34  
22 Q Could I have you go to the next page? I 16:01:39  
23 want to direct your attention to the box "District 16:01:40  
24 Manager" and "Store Execution." 16:01:47  
25 Do you know what it means there by test, 16:01:54

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1 the store management's knowledge? 16:01:55  
2 A He is basically saying that the district 16:02:01  
3 manager needs to say, "Does the store management 16:02:04  
4 know what the competitors are up to? Does he know 16:02:15  
5 that the guy who is next door is lower than him on 16:02:18  
6 ten items?" 16:02:25  
7 Q Circuit City expected its store managers 16:02:27  
8 to know that type of information about its 16:02:30  
9 competitors' sales prices? 16:02:32  
10 A He expected them to be able to create an 16:02:35  
11 environment that kept us competitive. 16:02:38  
12 Q In creating that environment it included 16:02:42  
13 knowing the prices charged by competitors. 16:02:46  
14 A The manager himself may not know those, 16:02:49  
15 but because he has got people that he sent out to 16:02:52  
16 do shopping reports, and because he looks at ads 16:02:56  
17 and other activity that is public, he should have 16:03:00  
18 some idea of what is going on in the business. 16:03:07  
19 Q Looking at the next row down that is 16:03:10  
20 titled "Ad Advice," is it correct that it is a 16:03:13  
21 weekly or a daily responsibility of the employees 16:03:18  
22 listed on this chart to review competitor ads for 16:03:21  
23 strategic and pricing information? 16:03:26  
24 A It would appear to be, yes, but almost 16:03:27  
25 everybody in the company looked at competitor ads 16:03:31

45 (Pages 174 - 177)

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1 just again so he would know what was going on. 16:03:34  
2 Q Can I have you turn two pages forward to 16:03:54  
3 the page ending in 21810 under pricing 16:03:57  
4 coordinator's monthly responsibilities, do you see 16:04:06  
5 where it says "communicate monthly shopping 16:04:09  
6 calendar"? 16:04:11  
7 A Yes. 16:04:12  
8 Q What does that mean? 16:04:13  
9 A The pricing coordinator is saying who we 16:04:15  
10 are going to shop and when we are to shop them. 16:04:21  
11 Q So the pricing coordinator would send 16:04:25  
12 out assignments to shop other stores? 16:04:27  
13 A One price coordinator typically could 16:04:30  
14 not do all the shopping, so he is going to say, 16:04:33  
15 "This store needs to help me by shopping this, and 16:04:38  
16 this store needs to help me by shopping that," and 16:04:42  
17 so on, so he can get or she can get all of their 16:04:44  
18 information together. 16:04:48  
19 Q Going to the daily column row for sale 16:04:55  
20 counselors. So the bottom white box on the same 16:05:02  
21 page, where it says, "Put up take down price tags 16:05:06  
22 as directed by sales managers." 16:05:10  
23 Was putting up or taking down price tags 16:05:12  
24 as directed by sales managers a daily function of 16:05:14  
25 sales counselors at Circuit City? 16:05:18

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1 A No. It is listed under daily, but it 16:05:20  
2 wasn't a daily activity. You had pricing that 16:05:26  
3 happened on a week long basis because your PSB 16:05:30  
4 came out and it talked about the promo report, so 16:05:37  
5 you had a promo report that had to be tagged. 16:05:40  
6 If you had a competitive price reaction, 16:05:43  
7 it could happen off of that cycle, but we 16:05:45  
8 specifically tried to tie those cycles so that 16:05:53  
9 they didn't have to do it every single day. 16:05:55  
10 You would typically say the ad, start on 16:05:59  
11 Sunday, they end on Saturday, so Sunday is the day 16:06:02  
12 where you put everything up. However, your 16:06:05  
13 competitors run their ads on Sunday also, so you 16:06:09  
14 have got to have a reaction to that and those may 16:06:13  
15 be up Monday or they may be up Tuesday. 16:06:17  
16 You had two or three days that had high 16:06:20  
17 activity. You may also have another ad during the 16:06:24  
18 week like a Thursday or Friday. 16:06:28  
19 Q And high activity in that context would 16:06:31  
20 mean changing prices to react to a competitor's 16:06:34  
21 prices? 16:06:37  
22 A Mostly it's because you're having an ad 16:06:38  
23 and you have got all of these changes that you 16:06:41  
24 have got to do to do your own add. 16:06:44  
25 There would be far more changes based on 16:06:46

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1 our own promotional calendar than there would be 16:06:49  
2 your competitor's calendar. 16:06:51  
3 Q Was Circuit City's promotional calendar 16:06:53  
4 driven in part by competitor's prices? 16:06:56  
5 A It was driven by competitor's ad prices. 16:06:59  
6 Q Can I have you turn to the following 16:07:04  
7 page. Do you know who Tim Kopp is, the name at 16:07:05  
8 the top of this page? 16:07:12  
9 A I remember the name. I do not know him. 16:07:14  
10 Q Do you know what role Mr. Kopp had at 16:07:17  
11 Circuit City? 16:07:20  
12 A No. 16:07:21  
13 Q Are you familiar with the corporate 16:07:22  
14 operations department? 16:07:24  
15 A Yes. 16:07:25  
16 Q What is that? 16:07:25  
17 A That would be the store management group 16:07:26  
18 and everybody in the store. For us "operations" 16:07:30  
19 was everybody that ran the stores that worked in 16:07:36  
20 the stores. 16:07:39  
21 Q So that corporate operations meant 16:07:40  
22 anybody that worked in any Circuit City store? 16:07:42  
23 A Corporate operations would be the 16:07:44  
24 supervisors for the people who worked in the 16:07:47  
25 stores. 16:07:49

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1 Q Was corporate operations located in 16:07:50  
2 Richmond? 16:07:53  
3 A Yes. 16:07:54  
4 Q This document refers to A and B prices. 16:07:56  
5 Are you familiar with those terms? 16:07:59  
6 MR. LAIRD: For the record, this 16:08:02  
7 document appears to be a draft. It has got 16:08:03  
8 strike-throughs and underlines. It looks 16:08:07  
9 like a red line and it has got the black 16:08:10  
10 lines on the side. 16:08:11  
11 To the extent that you want to ask him 16:08:12  
12 about a document that is clearly a draft, I 16:08:14  
13 will object in that it lacks foundation as 16:08:18  
14 to what this document really is. 16:08:22  
15 BY MS. LIN: 16:08:24  
16 Q Do you see at the top of the document, 16:08:24  
17 it says, "supersedes"? 16:08:26  
18 A Yes. 16:08:29  
19 Q Do you see the date there is July 31, 16:08:31  
20 1996? 16:08:34  
21 A Yes. 16:08:34  
22 Q Do you understand that that would mean 16:08:37  
23 that the version, that parts of this document that 16:08:39  
24 are not red lined are underlined were in the 16:08:42  
25 original policy? 16:08:46

46 (Pages 178 - 181)

| Page 182  | Page 184  |
|---|---|
| <p>1 MR. LAHAD: Calls for speculation, lacks 16:08:47</p> <p>2 foundation. 16:08:49</p> <p>3 THE WITNESS: That would be what it 16:08:50</p> <p>4 appears, yes. 16:08:54</p> <p>5 BY MS. LIN: 16:08:55</p> <p>6 Q You are familiar with store pricing 16:08:55</p> <p>7 policies other than this document? 16:08:57</p> <p>8 A Yes. 16:09:02</p> <p>9 Q Did those store pricing policies include 16:09:03</p> <p>10 information about shopping competitors' retail 16:09:06</p> <p>11 prices just like we have been discussing? 16:09:07</p> <p>12 A Yes. 16:09:12</p> <p>13 Q Are you familiar with the terms A and B 16:09:13</p> <p>14 pricing at Circuit City? 16:09:14</p> <p>15 A Yes. 16:09:16</p> <p>16 Q What does that mean? 16:09:16</p> <p>17 A The A price was the price that you were 16:09:18</p> <p>18 tagged at the majority of the time. 16:09:23</p> <p>19 The B price was most often your ad price 16:09:28</p> <p>20 which quite often aligned with the manufacturer's 16:09:36</p> <p>21 minimum advertised price. 16:09:40</p> <p>22 But the price that would show up in the 16:09:44</p> <p>23 stores -- the B price was created for the ease of 16:09:48</p> <p>24 changing our own pricing so that you could say, "I 16:09:55</p> <p>25 want to put all CRT TV on sale," then it would all 16:10:01</p>                     | <p>1 Q Was that Circuit City's strategy to your 16:11:45</p> <p>2 understanding? 16:11:49</p> <p>3 MR. LAHAD: I will object again on the 16:11:50</p> <p>4 basis that this is a draft document. He is 16:11:50</p> <p>5 reading part of the red line version of this 16:11:53</p> <p>6 document. 16:11:56</p> <p>7 THE WITNESS: It may have been our 16:11:59</p> <p>8 strategy at various times during this period 16:12:05</p> <p>9 of time. 16:12:07</p> <p>10 BY MS. LIN: 16:12:08</p> <p>11 Q Are you familiar with when Circuit 16:12:09</p> <p>12 City's strategy was not to initiate advertised 16:12:12</p> <p>13 prices lower than the prevailing market price? 16:12:13</p> <p>14 A Well, our overall strategy is to 16:12:16</p> <p>15 maximize the profitability of our products, so we 16:12:21</p> <p>16 always had an overall strategy or we had reason 16:12:24</p> <p>17 not to be driving pricing down, but we also had to 16:12:32</p> <p>18 have exceptions to that which is that our ad 16:12:39</p> <p>19 prices had to be effective. 16:12:41</p> <p>20 What this is saying at the field level 16:12:45</p> <p>21 is that we are going to price where we are 16:12:51</p> <p>22 competitive and we are not looking for you to 16:13:00</p> <p>23 change an ad and drive your market down and so on. 16:13:04</p> <p>24 By this time, I don't know that they 16:13:11</p> <p>25 could have even changed an ad if they wanted to. 16:13:14</p>  |
| Page 183  | Page 185  |
| <p>1 go to B price. It was used as a process for our 16:10:06</p> <p>2 promotional purposes. 16:10:12</p> <p>3 Q Did A price tend to be higher or B 16:10:15</p> <p>4 price? 16:10:18</p> <p>5 A A price is the everyday higher price. 16:10:18</p> <p>6 Q Do you know what PSB price in this 16:10:28</p> <p>7 document means? 16:10:31</p> <p>8 A It is the A price would have been -- 16:10:32</p> <p>9 well, at one point, the PSB would show you both an 16:10:36</p> <p>10 A and B price, but the PSB is what we discussed 16:10:40</p> <p>11 earlier. 16:10:45</p> <p>12 So the PSB price could have been either 16:10:46</p> <p>13 the A price or the B price. I believe he is 16:10:48</p> <p>14 saying here the A PSB price. 16:10:52</p> <p>15 Q Sorry, remind me, what is the acronym 16:10:55</p> <p>16 for PSB? 16:10:58</p> <p>17 A Program Strategy Book. 16:10:58</p> <p>18 Q That's right. Can I have you turn to 16:11:00</p> <p>19 the page ending in Bates No. 21813, so two pages 16:11:03</p> <p>20 forward and under the heading advertised prices, 16:11:13</p> <p>21 can you read the sentence beginning, "Our 16:11:15</p> <p>22 Strategy?" 16:11:20</p> <p>23 A "Our strategy is not to initiate 16:11:39</p> <p>24 advertised prices lower than the prevailing market 16:11:41</p> <p>25 advertised price." 16:11:44</p> | <p>1 Q Do you know of any point in time when 16:13:17</p> <p>2 Circuit City's strategy was to initiate advertised 16:13:19</p> <p>3 prices lower than the prevailing market advertised 16:13:23</p> <p>4 price? 16:13:26</p> <p>5 A If sales are bad, then we have to do 16:13:27</p> <p>6 what we have to do to create sales. 16:13:32</p> <p>7 Although you have an overall strategy 16:13:36</p> <p>8 that says that you are trying to make the most 16:13:39</p> <p>9 amount of profit possible by putting a product out 16:13:42</p> <p>10 there at a competitive price and getting a sale. 16:13:47</p> <p>11 If you're not getting sales, then you may choose 16:13:49</p> <p>12 to do something else. 16:13:53</p> <p>13 Q And other specific times that you are 16:13:58</p> <p>14 aware of that Circuit City elected to follow a 16:14:00</p> <p>15 policy of initiating the lowest advertised price 16:14:04</p> <p>16 with respect to CRT finished products? 16:14:07</p> <p>17 A During Black Friday because it is so 16:14:09</p> <p>18 important to setting the tone for the Christmas 16:14:20</p> <p>19 period, we specifically wanted to win. 16:14:22</p> <p>20 We did not want to get beat. 16:14:27</p> <p>21 You might be okay if you match, but 16:14:31</p> <p>22 since you don't have a clue what the other guy is 16:14:34</p> <p>23 going to advertise, you get very aggressive 16:14:37</p> <p>24 because you know that it is a time that people get 16:14:41</p> <p>25 very aggressive. 16:14:44</p> |

47 (Pages 182 - 185)

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1 Q Were there times other than Black Friday 16:14:46  
2 sales where Circuit City would advertise CRT 16:14:48  
3 finished products lower than other advertised 16:14:51  
4 prices for CRT finished products by competitors? 16:14:54  
5 A You would do it for the same reasons we 16:14:57  
6 talked about pricing in general which is, if you 16:15:00  
7 had an excess inventory of a product, and you 16:15:02  
8 needed to get rid of it, then you're going to 16:15:05  
9 advertise it at what you think it needs to be done 16:15:08  
10 to sell it. 16:15:10  
11 If you weren't competitive on one 16:15:15  
12 product because you did not carry it or whatever 16:15:17  
13 you might get more competitive on another product, 16:15:19  
14 but in all cases, it could drive additional sell 16:15:23  
15 through. 16:15:28  
16 (Whereupon, Deposition Exhibit 2844 is marked for 16:15:31  
17 identification.) 16:15:31  
18 MS. LIN: You can put that document 16:15:31  
19 aside, I will mark a document, Exhibit 2844. 16:15:31  
20 Bates No. CC 0606306. 16:15:48  
21 BY MS. LIN: 16:15:53  
22 Q Mr. Denson, are you familiar with any of 16:15:54  
23 the people on the email Exhibit 2844? 16:16:28  
24 A Yes, 16:16:31  
25 Q Who is Mr. Fium? 16:16:33

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1 A He is working in what at this time is 16:16:35  
2 what's called a pricing team, I believe. He could 16:16:41  
3 have also been doing this based on November 25, 16:16:45  
4 2007, yes, probably pricing team, sorry. 16:16:49  
5 Q What was the pricing team? 16:16:53  
6 A We had a pricing team that helped make 16:16:56  
7 sure that all the downloads were correct and that 16:17:01  
8 we were dealing with the end of life product and 16:17:05  
9 end pricing down into end of life product, 16:17:08  
10 Buyers could deal with product that was 16:17:12  
11 continually product still being sold, still being 16:17:16  
12 in all stores, but invariably you would end up 16:17:20  
13 with leftovers and those did not get high 16:17:23  
14 visibility, so the pricing team would say, "You 16:17:27  
15 have got ~~all of those~~ and you have funded them for 16:17:28  
16 four months, what are you doing ~~with~~ it?" 16:17:32  
17 Q What does it mean to download a product? 16:17:34  
18 A Downloaded means that you are 16:17:36  
19 downloading a price for the stores so that they 16:17:38  
20 would then tag to that price so that when they 16:17:43  
21 went to sell it it would automatically come up at 16:17:46  
22 that price. 16:17:51  
23 Q Does downloading a price mean to 16:17:51  
24 decrease a price? 16:17:54  
25 A Well, no, it could mean that you 16:17:54

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1 increased the price, but it just means that you 16:17:58  
2 have put it in the system where it will come up. 16:18:01  
3 MR. LAHAD: My page 2 on this is exhibit 16:18:05  
4 is blank. 16:18:08  
5 THE WITNESS: Mine is too. 16:18:09  
6 MS. LIN: I think that is just how it 16:18:11  
7 was produced. 16:18:13  
8 BY MS. LIN: 16:18:16  
9 Q Downloading a price effectively means to 16:18:16  
10 put the electronic system used by stores to learn 16:18:22  
11 their prices? 16:18:26  
12 A Right, it specifically refers to the way 16:18:27  
13 our computer processed input overnight and then 16:18:29  
14 downloaded that to the stores. 16:18:35  
15 Q You were discussing a pricing team 16:18:36  
16 previously. How big was the pricing team, do you 16:18:38  
17 know? 16:18:41  
18 A I think at its largest it might have 16:18:44  
19 been as many as five, six people. I don't know 16:18:46  
20 precisely. 16:18:51  
21 Q Was that team located in one location? 16:18:53  
22 A Richmond, Virginia. 16:18:56  
23 Q Do you know when the pricing team was 16:18:57  
24 created? 16:19:00  
25 A I believe it was around 2004. Similar 16:19:03

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1 to when we started the BMA. 16:19:09  
2 Q At the end of the CC line on Exhibit 16:19:13  
3 2844, there are two emails ending in 16:19:16  
4 "Deloitte.com." Are you familiar with either of 16:19:19  
5 those people? 16:19:24  
6 A No. 16:19:29  
7 Q Do you know why employees from Deloitte 16:19:30  
8 might be c'd on an email about Circuit City's 16:19:33  
9 pricing? 16:19:36  
10 A Yes. 16:19:37  
11 Q Why's that? 16:19:37  
12 A They were a consultant. 16:19:38  
13 Q What were they consulting Circuit City 16:19:40  
14 on? 16:19:43  
15 A Practically everything. I don't know 16:19:45  
16 whether Deloitte specifically was that broad, but 16:19:47  
17 this was a time period when Circuit City was 16:19:51  
18 suffering and they had brought in quite a bit of 16:19:54  
19 consultants to evaluate practically everything 16:19:58  
20 that we did at the corporate level. 16:20:01  
21 Q The subject of this e-mail is, "Best Buy 16:20:04  
22 Reactions Week of 11/25," do you see that? 16:20:06  
23 A Yes. 16:20:10  
24 Q What do you understand that to mean? 16:20:12  
25 A What I would understand it to mean is 16:20:15

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VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

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1 that, "This is what we are doing this week in 16:20:19  
2 reaction to the Best Buy's ad of this week of 16:20:21  
3 11/25, which by the way, is probably including 16:20:25  
4 Thanksgiving and Black Friday." 16:20:29  
5 Q Do you know if Circuit City had weekly 16:20:30  
6 reactions to Best Buy's ads? 16:20:33  
7 A We did at times. 16:20:35  
8 Q Do you know at what time Circuit City 16:20:39  
9 had weekly reactions to Best Buy's ads? 16:20:41  
10 A As you can see here, he is talking about 16:20:44  
11 that he is not going to download it for everybody, 16:20:47  
12 he is only going to download it for 100 stores. 16:20:50  
13 At other times we did not download 16:20:53  
14 anything from corporate level. Everything was 16:20:55  
15 done at the store level and then as we discussed 16:20:58  
16 earlier there were times when we did not react. 16:21:03  
17 Q And the Best Buy reactions described in 16:21:06  
18 Exhibit 2844 are all price reductions by Circuit 16:21:10  
19 City, is that right? 16:21:13  
20 A That would be logical. 16:21:15  
21 Q Because Circuit City was typically 16:21:24  
22 reducing its prices when it was responding to the 16:21:27  
23 Best Buy? 16:21:30  
24 A Well, it's logical because you typically 16:21:31  
25 don't have to go up to stay competitive. You 16:21:33

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1 typically have to go down to stay competitive. 16:21:36  
2 Q Did Circuit City ever ask its CRT 16:21:54  
3 finished product vendors about the prices at which 16:21:57  
4 they were selling to Circuit City competitors? 16:22:00  
5 A No. 16:22:02  
6 Q Was anyone at Circuit City responsible 16:22:03  
7 for trying to gather that type of information 16:22:05  
8 about the prices at which products were sold to 16:22:07  
9 Circuit City's competitors? 16:22:08  
10 A No. 16:22:11  
11 MR. LAHAD: Again, you meant cost. 16:22:13  
12 MS. LIN: Yes. 16:22:16  
13 THE WITNESS: She said prices sold to. 16:22:17  
14 BY MS. LIN: 16:22:21  
15 Q Did Circuit City consider the prices at 16:22:23  
16 which its competitors were selling products to 16:22:28  
17 consumers to be confidential? 16:22:30  
18 A If the price that they were selling to 16:22:34  
19 consumers was public information, so no. 16:22:37  
20 Q Did Circuit City consider the volume of 16:22:40  
21 competitor's inventory that was being sold to 16:22:42  
22 consumers to be confidential? 16:22:45  
23 MR. LAHAD: Objection, lacks foundation. 16:22:47  
24 THE WITNESS: Yes. 16:22:50  
25 BY MS. LIN: 16:22:51

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1 Q During the relevant time period, did 16:22:52  
2 Circuit City consider the market for CRT finished 16:22:59  
3 products that it was buying and selling to be 16:23:02  
4 competitive? 16:23:05  
5 MR. LAHAD: Objection, vague. 16:23:09  
6 THE WITNESS: I don't even know what you 16:23:10  
7 are asking, sorry. 16:23:11  
8 BY MS. LIN: 16:23:12  
9 Q Did Circuit City consider the market for 16:23:13  
10 CRT finished product sales to consumers to be a 16:23:15  
11 competitive one? 16:23:19  
12 MR. LAHAD: Same objection. 16:23:19  
13 THE WITNESS: Yes. 16:23:20  
14 BY MS. LIN: 16:23:22  
15 Q Why was that? 16:23:22  
16 A Because all consumer electronics is 16:23:24  
17 competitive. 16:23:28  
18 Q If I use the term plasma, will you 16:23:37  
19 understand that to mean a type of monitor or TV 16:23:38  
20 technology? 16:23:40  
21 A Yes. 16:23:41  
22 Q Did Circuit City consider plasma 16:23:41  
23 products to be competitors to CRT finished 16:23:44  
24 products? 16:23:46  
25 MR. LAHAD: Objection, vague. 16:23:48

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1 THE WITNESS: I don't see it as a 16:23:51  
2 competitor. It's another offering. It is an 16:23:53  
3 alternative, I guess, we sold. 16:23:58  
4 BY MS. LIN: 16:24:03  
5 Q Did plasma products and CRT finished 16:24:04  
6 products compete for the same floor space in 16:24:06  
7 Circuit City Stores? 16:24:11  
8 A They could. 16:24:12  
9 Q Did they ever compete for the same 16:24:12  
10 customers? 16:24:15  
11 A Only to the degree that there is some 16:24:18  
12 sort of convergence of similar pricing, but my 16:24:21  
13 experience as a customer, and sitting on many many 16:24:26  
14 video meetings, is that the pricing of plasma 16:24:31  
15 product was very far apart from the retail pricing 16:24:34  
16 of plasma product very far apart from pricing of 16:24:40  
17 CRT product. 16:24:45  
18 Of course, you have the exception again 16:24:46  
19 as we talked earlier if you have a very large CRT 16:24:49  
20 product, the pricing may be close. 16:24:53  
21 Q Do you know if Circuit City ever used 16:24:56  
22 the cost it was paying for plasma products as part 16:25:00  
23 of its negotiations in negotiating to purchase CRT 16:25:04  
24 finished products? 16:25:09  
25 MR. LAHAD: Vague. 16:25:12

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1 THE WITNESS: First of all, they are not 16:25:14  
2 going to share the costs, so they cannot do 16:25:15  
3 it from -- but they might have done it from a 16:25:18  
4 viewpoint of, "I am going to be selling 16:25:24  
5 plasma product at lower than what you are 16:25:29  
6 quoting us this CRT product for," and it 16:25:31  
7 looks better. 16:25:36  
8 So in that context, yes. 16:25:38  
9 BY MS. LIN: 16:25:39  
10 Q That would be a way to try to seek a 16:25:39  
11 reduced cost to Circuit City of the CRT finished 16:25:42  
12 product? 16:25:45  
13 MR. LAHAD: Misstates the testimony. 16:25:46  
14 THE WITNESS: Right, and it also might 16:25:47  
15 explain why you are not buying it. 16:25:49  
16 BY MS. LIN: 16:25:51  
17 Q If I use the term LCD, will you 16:25:51  
18 understand that to mean liquid crystal display? 16:25:54  
19 A Yes. 16:25:56  
20 Q Did Circuit City consider LDC products 16:25:57  
21 to be competitors to CRT finished products? 16:25:59  
22 MR. LAHAD: Vague. 16:26:03  
23 THE WITNESS: I would give you the exact 16:26:04  
24 same answer as I did for the plasma. 16:26:05  
25 There were customers who only wanted a 16:26:10

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1 certain price point and where the price 16:26:14  
2 points intersect they would be competitors 16:26:17  
3 and where they did not intersect they would 16:26:20  
4 become less an impact to each other. 16:26:22  
5 BY MS. LIN: 16:26:24  
6 Q In negotiations with CRT finished 16:26:28  
7 product vendors similar to what we were discussing 16:26:33  
8 in the plasma context, did Circuit City ever use 16:26:36  
9 the prices of LCD finished products as a 16:26:39  
10 negotiating point to purchase the CRT finished 16:26:42  
11 products? 16:26:45  
12 MR. LAHAD: Vague. 16:26:46  
13 THE WITNESS: I would answer the same 16:26:47  
14 way. We would not be talking about the 16:26:48  
15 prices that we were buying LCD product from 16:26:53  
16 in specific numbers. 16:26:57  
17 We would be talking about we probably 16:26:59  
18 just counseled it around retail, but we can 16:27:03  
19 sell this product, we are going to be able 16:27:06  
20 to sell an LCD product for this price, so 16:27:11  
21 therefore, we are not interested in selling 16:27:14  
22 a CRT at some price. 16:27:18  
23 That negotiation might be that I don't 16:27:22  
24 want to buy it and does that mean that the 16:27:24  
25 CRT vendor does something, then yes. 16:27:27

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1 BY MS. LIN: 16:27:32  
2 Q Did Circuit City's sales prices to 16:27:32  
3 consumers on plasma products impact the prices 16:27:35  
4 that Circuit City charged to consumers for CRT 16:27:39  
5 finished products? 16:27:42  
6 MR. LAHAD: Vague. 16:27:47  
7 THE WITNESS: What we sold one product 16:27:48  
8 for influence, what we sold the other product 16:27:50  
9 for, the plasma versus CRT to the degree that 16:27:52  
10 the customer would buy the product. 16:28:04  
11 BY MS. LIN: 16:28:06  
12 Q What do you mean by that? 16:28:09  
13 A If we had a CRT product and we planned 16:28:10  
14 to sell it for \$400, and we had another LCD 16:28:15  
15 product that we planned to sell for \$500, and the 16:28:19  
16 CRT product wasn't selling, then we might say that 16:28:22  
17 it needs to be further away from the other 16:28:27  
18 product. 16:28:29  
19 Q And CRT finished products in that 16:28:33  
20 context would need to be lower than plasma or LCD 16:28:36  
21 products, is that right? 16:28:39  
22 A If they were comparably featured 16:28:40  
23 typically LCD product was lighter and was trending 16:28:43  
24 to become popular. 16:28:49  
25 MS. LIN: Let's take a quick break to 16:28:53

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1 change the tape. 16:28:52  
2 THE VIDEOGRAPHER: The time is 16:28:54  
3 approximately 4:28 p.m. This is end of tape 16:28:55  
4 number 3. We are off the record. 16:28:59  
5 (Whereupon, a break in the proceedings commenced 16:29:14  
6 at 4:28 p.m. and on resuming at 4:30 p.m.) 16:29:14  
7 THE VIDEOGRAPHER: This is the beginning 16:31:13  
8 of tape number 4. The time is approximately 16:31:14  
9 4:30 p.m. We are back on the record. 16:31:17  
10 BY MS. LIN: 16:31:18  
11 Q Do you know how Circuit City learned its 16:31:19  
12 alleged claims in this lawsuit? 16:31:22  
13 A No. 16:31:23  
14 Q Did you know why Circuit City came to 16:31:26  
15 believe that defendants engaged in the alleged 16:31:28  
16 conspiracy without revealing any communications 16:31:30  
17 with your counsel? 16:31:33  
18 A I have seen interrogatories on the LCD 16:31:37  
19 case that would -- 16:31:44  
20 MR. ROSS: Let me stop you there. That 16:31:48  
21 is different. 16:31:49  
22 THE WITNESS: I have not seen anything 16:31:49  
23 on this. 16:31:51  
24 BY MS. LIN: 16:31:54  
25 Q During the relevant time period, did 16:31:54

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| Page 198 |  | Page 200 |   |
|----------|--|----------|---|
| 1        | anyone at Circuit City suspect that prices of CRT finished products were being kept high because of any price fixing?                    | 1        | reading of Exhibit 2845?  |
| 2        | 16:31:56   | 2        | 16:34:35  |
| 3        | 16:32:03   | 3        | MR. LAHAD: Is that 30(b)(6) question or is that for him?  |
| 4        | A No.  | 4        | 16:34:40  |
| 5        | 16:32:05   | 5        | MS. LIN: That is a 30(b)(6) question.   |
| 6        | (Whereupon, Deposition Exhibit 2845 is marked for identification.)   | 6        | 16:34:41  |
| 7        | 16:32:05   | 7        | MR. LAHAD: Lacks foundation.  |
| 8        | MS. LIN: I am going to mark an exhibit as Exhibit 2845. This is Bates No. CC 0548555.  | 8        | 16:34:44  |
| 9        | 16:32:15   | 9        | MR. GRALEWSKI: Objection, form.   |
| 10       | 16:32:21   | 10       | 16:34:47  |
| 11       | BY MS. LIN:  | 11       | THE WITNESS: It wasn't uncommon for vendors to tell us that their costs were going up. The rest of it, I just purely speculate, and speaking for Circuit City, I don't want to do that.   |
| 12       | 16:32:38   | 12       | 16:35:08  |
| 13       | Q Is Exhibit 2845 a white paper along the type that we were reviewing previously?  | 13       | 16:35:11  |
| 14       | 16:32:39   | 14       | BY MS. LIN:   |
| 15       | 16:32:45   | 15       | 16:35:13  |
| 16       | A This one doesn't look like it is a preparation for a meeting, but rather a recap of a previous meeting.                                | 16       | Q Reading the fourth bullet of Exhibit 2845, does it appear to you that CRT finished product prices were decreasing at the same time that tube prices were allegedly increasing?  |
| 17       | 16:32:58   | 17       | 16:35:22  |
| 18       | Q Would that meeting be with Sony?   | 18       | 16:35:26  |
| 19       | 16:33:02   | 19       | MR. LAHAD: Lacks foundation, calls for speculation.   |
| 20       | A Yes.   | 20       | 16:35:28  |
| 21       | 16:33:04   | 21       | THE WITNESS: It says that the industry average retail is down, so with that, that could be because you are selling more of a lower-priced point product than a higher-priced point product, they would not have to necessarily be going down. |
| 22       | Q Are you familiar with the name of Jim Palumbo?   | 22       | 16:35:45  |
| 23       | 16:33:06   | 23       | 16:35:46  |
| 24       | A No.  | 24       | BY MS. LIN:   |
| 25       | 16:33:07   | 25       | 16:35:46  |
| 1        | Q I will represent to you that Jim Palumbo was employed by a Sony entity.  | 1        | Q Do you see where it says, "Palumbo believes that a 5 to 10 percent tube price increase with stick in early 1997"?   |
| 2        | 16:33:11   | 2        | 16:35:49  |
| 3        | A Okay.  | 3        | 16:35:51  |
| 4        | 16:33:18   | 4        | 16:35:54  |
| 5        | Q Can I have you read to yourself the fourth bullet on the first page.   | 5        | A Yes.  |
| 6        | 16:33:22   | 6        | 16:35:56  |
| 7        | 16:33:49   | 7        | Q This memo is reporting that Palumbo replied this information as part of Circuit City's meeting with Sony, correct?  |
| 8        | 16:33:51   | 8        | 16:36:03  |
| 9        | 16:33:55   | 9        | MR. LAHAD: Calls for speculation, lacks foundation, and speaks for itself.  |
| 10       | 16:33:58   | 10       | 16:36:06  |
| 11       | 16:34:02   | 11       | THE WITNESS: I don't know, but it implies such.   |
| 12       | MR. LAHAD: Lacks foundation, calls for speculation.  | 12       | 16:36:12  |
| 13       | 16:34:04   | 13       | BY MS. LIN:   |
| 14       | 16:34:06   | 14       | 16:36:16  |
| 15       | THE WITNESS: I don't know.   | 15       | Q Does the comment about a 5 to 10 percent tube price increase sticking suggest to you that there might have been an agreement among tube manufacturers to increase tube prices?  |
| 16       | 16:34:07   | 16       | 16:36:25  |
| 17       | Q Is it possible that these three vendors could have moved their two prices at the same time as they were not coordinating their prices? | 17       | 16:36:29  |
| 18       | 16:34:08   | 18       | MR. LAHAD: Lacks foundation, calls for speculation, speaks for itself.  |
| 19       | 16:34:12   | 19       | 16:36:29  |
| 20       | MR. LAHAD: Calls for speculation, lacks foundation.  | 20       | THE WITNESS: I can only give you a personal interpretation that it implies that they all went up and that therefore it is going to stay.  |
| 21       | 16:34:17   | 21       | 16:36:41  |
| 22       | THE WITNESS: I don't know.   | 22       | 16:36:44  |
| 23       | 16:34:18   | 23       | BY MS. LIN:   |
| 24       | BY MS. LIN:  | 24       | 16:36:46  |
| 25       | 16:34:19   | 25       | Q Do you know if Circuit City investigated why the three manufacturers all raised their tube price at the same time?  |
| 1        | Q Do you know if Circuit City investigated why the three manufacturers all raised their tube price at the same time?                     | 1        | 16:36:48  |
| 2        | 16:34:25   | 2        | 16:36:51  |
| 3        | A I do not know.   | 3        |   |
| 4        | 16:34:26   |          |   |
| 5        | MR. LAHAD: Assumes facts, lacks foundation.  |          |   |
| 6        | 16:34:27   |          |   |
| 7        | 16:34:31   |          |   |
| 8        | BY MS. LIN:  |          |   |
| 9        | 16:34:31   |          |   |
| 10       | Q Do you think Circuit City should have investigated that information based on your  |          |   |

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1 stick? 16:36:54  
2 A No. 16:36:55  
3 MS. LIN: Let's go briefly go off the 16:37:01  
4 record. 16:37:01  
5 THE VIDEOGRAPHER: The time is 4:37 p.m. 16:37:03  
6 and we are off the record. 16:37:04  
7 (Whereupon, a break in the proceedings commenced 16:38:10  
8 at 4:37 p.m. and on resuming at 4:38 p.m.) 16:38:10  
9 THE VIDEOGRAPHER: The time is 16:38:10  
10 approximately 4:38 p.m. and we are back on 16:38:11  
11 the record. 16:38:13  
12 MR. BAVE: Good afternoon, Mr. Deason, 16:38:16  
13 my name is William Bave and I represent the 16:38:17  
14 Toshiba entities. Thanks for you time this 16:38:18  
15 afternoon. 16:38:22  
16 THE WITNESS: You are welcome. 16:38:22  
17 EXAMINATION BY MR. BAVE: 16:38:22  
18 Q You mentioned earlier in your testimony 16:38:23  
19 that Circuit City purchased CRT finished products 16:38:24  
20 from Toshiba, is that correct? 16:38:28  
21 A I believe that we did do so. 16:38:32  
22 Q When you purchased a Toshiba brand CRT 16:38:34  
23 product, did Circuit City know where that product 16:38:38  
24 had been manufactured? 16:38:42  
25 A They would not know where all product 16:38:43

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1 was manufactured. They may have visited a factory 16:38:45  
2 and seen where some product was manufactured. 16:38:49  
3 Q Did Circuit City know who had 16:38:52  
4 manufactured the CRT within the Toshiba branded 16:38:53  
5 finished product? 16:38:57  
6 A Not in general, no. 16:38:58  
7 Q Before we talked about who Circuit City 16:39:01  
8 viewed as their competitors and the retail space 16:39:04  
9 and you mentioned I think just generally regional 16:39:08  
10 companies, correct? 16:39:11  
11 A Correct. 16:39:12  
12 Q Can you list some of the ones that come 16:39:13  
13 to mind as regional competitors? 16:39:15  
14 A Future Shop, ~~Walmart~~, American TV, HH 16:39:18  
15 Craig, Electronics Express, Sound Advice, Ultimate 16:39:25  
16 Electronics, and that is probably as good as I am 16:39:33  
17 going to get. 16:39:39  
18 Q How about Brondsmart, was that regional? 16:39:40  
19 A Brandy mart, definitely. Two different 16:39:40  
20 Brandy marts, by the way. 16:39:44  
21 Q Did Circuit City also view warehouse 16:39:46  
22 clubs such as Costco as competitors in that space? 16:39:49  
23 A Yes. 16:39:51  
24 Q Did Circuit City have a corporate policy 16:39:54  
25 with respect to gathering the competitive 16:39:57

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1 information? 16:39:59  
2 A We had policies that changed over 16:40:01  
3 periods of time, but yes. 16:40:04  
4 Q How did the policies change over time? 16:40:06  
5 A Well, exactly who would do it, how they 16:40:08  
6 would do it, how often they would do it, and then 16:40:10  
7 what they would do in reaction to that. 16:40:14  
8 Q Did the types of competitive information 16:40:16  
9 that you would collect change over time? 16:40:19  
10 A Not really, I mean primarily you are 16:40:21  
11 wanting to know what did they tag it at, what did 16:40:25  
12 they sell at and what did they advertise it at? 16:40:29  
13 Q Were those policies you mentioned in 16:40:32  
14 writing? 16:40:34  
15 A Some were as introduced earlier. 16:40:34  
16 Q Do those policies prohibit the Circuit 16:40:39  
17 City's employees from speaking directly with 16:40:41  
18 competitors' staffs? 16:40:44  
19 MR. LAHAD: Vague. 16:40:46  
20 THE WITNESS: We had training about the 16:40:49  
21 appropriateness of sharing data with 16:40:56  
22 competitors, yes. 16:40:59  
23 BY MS. LIN: 16:41:00  
24 Q Was that training with an attorney? 16:41:01  
25 A We had training at the buyer level, that 16:41:04

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1 dealt with that type of information and then at 16:41:06  
2 the store level you would have training. "Look, 16:41:13  
3 they are the enemy. We don't share data and we do 16:41:16  
4 not expect them to share data and that is not the 16:41:21  
5 way we do business." 16:41:25  
6 Q Did Circuit City use the results of its 16:41:27  
7 competitor monitoring in its price negotiations 16:41:29  
8 with the CRT product vendors? 16:41:33  
9 MR. LAHAD: Vague. 16:41:38  
10 THE WITNESS: No. 16:41:38  
11 THE REPORTER: Did you say no? 16:41:49  
12 THE WITNESS: I just said yes to him. 16:41:49  
13 THE REPORTER: Because it sounded like a 16:41:50  
14 no. 16:41:50  
15 THE WITNESS: Yes, we discuss with a 16:41:50  
16 vendor that a competitor had a price that we 16:41:54  
17 needed to compete with and that we might need 16:41:58  
18 a lower cost in order to be able to be 16:42:03  
19 competitive. 16:42:05  
20 BY MR. BAVE: 16:42:05  
21 Q Did Circuit City have any knowledge 16:42:05  
22 regarding its competitors' target margins in CRT 16:42:08  
23 finished products? 16:42:11  
24 A Not beyond anything that would have been 16:42:13  
25 in a corporate report, and typically, those 16:42:15

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1 margins were rolled up to such a big high level 16:42:19  
2 and included things like MDF and so on that you 16:42:23  
3 could not tell the kind of detail that you are 16:42:28  
4 asking. 16:42:34  
5 Q Where did you obtain the corporate 16:42:34  
6 reports from? 16:42:36  
7 A From whatever. Someone releases their 16:42:37  
8 annual corporate report, it is a public record. 16:42:40  
9 Q Was it anyone's particular 16:42:43  
10 responsibility to review these corporate reports 16:42:44  
11 and try to discern the margins? 16:42:48  
12 A Buyers would not review other 16:42:51  
13 competitors' reports. Our senior management like 16:42:55  
14 the president of the company, and so on, would, 16:43:04  
15 obviously, monitor the competition in that way 16:43:07  
16 since that is the same sort of thing that he is 16:43:11  
17 communicating, but the buyers, no one said, "Let's 16:43:14  
18 go look through these reports and try to figure 16:43:19  
19 out what the other guy is paying." 16:43:22  
20 Q How did the competitor information that 16:43:23  
21 was collected factor into Circuit City's retail 16:43:25  
22 price decisions? 16:43:29  
23 A As I said earlier, it could not factor 16:43:31  
24 at all or we could choose to react to the price. 16:43:36  
25 Way in the majority of the time well 16:43:42

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1 over 90 percent you are talking about a temporary 16:43:46  
2 reaction of a week or less and then we would go 16:43:50  
3 back to our pricing. 16:43:55  
4 With as many stores as we had managing 16:43:58  
5 different prices it was difficult so you tried as 16:44:01  
6 much as possible to keep pricing the same. 16:44:06  
7 Q Did the pricing decisions at Circuit 16:44:08  
8 City vary by region on its CRT products? 16:44:11  
9 A As we discussed earlier you may have a 16:44:15  
10 different set of competitors in one market versus 16:44:19  
11 the other and one market may be more competitive 16:44:22  
12 because of that, so in that aspect, it did vary. 16:44:26  
13 Q And those variations between the regions 16:44:31  
14 was usually dictated by the competition in those 16:44:33  
15 regions? 16:44:37  
16 A Yes. 16:44:37  
17 Q We have seen certain times where the 16:44:38  
18 collection of the competitive information has led 16:44:40  
19 to Circuit City lowering its price to be more in 16:44:43  
20 line with the competition, correct? 16:44:46  
21 A Correct. 16:44:48  
22 MR. LAHAD: Objection, misstates 16:44:49  
23 testimony. 16:44:50  
24 BY MR. BAVE: 16:44:50  
25 Q Is it also true that if competitive 16:44:50

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1 intelligence revealed that a competitor was 16:44:52  
2 pricing higher on a certain product, Circuit City 16:44:54  
3 would raise its price to that level? 16:44:57  
4 A Typically, we might raise our price 16:45:01  
5 back. If we had lowered it in reaction to them, 16:45:06  
6 and they raised it, then we would go back to the 16:45:09  
7 price typically where we were before. 16:45:13  
8 So we have that manufacturer's suggested 16:45:18  
9 retail price that we are trying to sell the 16:45:21  
10 product for, and if the competition has gone back 16:45:23  
11 to that price, or higher, then we are going to go 16:45:28  
12 back typically to the manufacturer's suggested 16:45:31  
13 retail price. 16:45:33  
14 (Whereupon, Deposition Exhibit 2846 is marked for 16:45:50  
15 identification.) 16:45:50  
16 MR. BAVE: I am going to hand you what 16:45:50  
17 has been marked Exhibit 2846 which is Bates 16:45:51  
18 labeled CC 0604919. Let me know when you 16:45:54  
19 have had a chance to review that. 16:46:13  
20 BY MR. BAVE: 16:46:26  
21 Q This is an email from somebody named 16:46:26  
22 Derrick Matilla from November 12, 2007, do you 16:46:28  
23 know who Derrick Matilla? 16:46:33  
24 A Yes, but I think it is pronounced 16:46:36  
25 Matilla. 16:46:38

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1 Q Excuse me. What was his position? 16:46:40  
2 A He was a buyer. 16:46:42  
3 Q In what department? 16:46:42  
4 A In the video or display department. 16:46:44  
5 Q And he is addressing the email to Team. 16:46:47  
6 Do you recognize the people in the "to / from" as 16:46:48  
7 a part of some team at Circuit City? 16:46:53  
8 A It appears to be the rest of the display 16:46:56  
9 team, that same group. This is the other buyers, 16:47:03  
10 some of the assistant buyers, some of the product 16:47:10  
11 managers, so the rest of the people within the 16:47:13  
12 video, the display team. 16:47:17  
13 Q As a senior buyer was Derrick involved 16:47:20  
14 in collecting the competitor intelligence that we 16:47:23  
15 have discussed today? 16:47:25  
16 A Derrick would have been involved from 16:47:29  
17 looking at a competitor's ad or when he is out and 16:47:31  
18 about going into the stores, but the 16:47:40  
19 over-competitive intelligence that came from the 16:47:46  
20 stores would have been more regular than what 16:47:50  
21 Derrick would have done. That was not his primary 16:47:55  
22 job to go out and find out. 16:47:59  
23 Q But he did receive the reports of the 16:48:01  
24 store employees that would go out and get a 16:48:04  
25 compilation -- 16:48:05

53 (Pages 206 - 209)

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1 A Right, so he would be advised of issues 16:48:05  
2 where we were not competitive. 16:48:09  
3 Q And his email reads, "that based on 16:48:12  
4 competitive intelligence we received last Friday, 16:48:15  
5 we have made the decision to change the price of 16:48:17  
6 the OLV 247 TFHD that will be featured in 16:48:19  
7 Wednesday TV commercial and on the web as a web 16:48:25  
8 only deal." 16:48:28  
9 Do you see that? 16:48:29  
10 A Yes. 16:48:29  
11 Q And he is recommending that based on 16:48:30  
12 that competitive intelligence, they want to raise 16:48:32  
13 the price from \$999 to \$1,999, do you see that? 16:48:35  
14 A Yes. 16:48:40  
15 Q He predicts, "... that this increase in 16:48:41  
16 price will not compromise our traffic to our site 16:48:45  
17 and will result in additional \$500,000 to \$700,000 16:48:48  
18 in profitability." Do you see that? 16:48:53  
19 A Yes. 16:48:54  
20 Q So based on the competitive intelligence 16:48:55  
21 he was able to discern that Circuit City was able 16:48:58  
22 to raise its price without damaging its profits, 16:49:01  
23 right? 16:49:04  
24 A Yes. 16:49:04  
25 MR. BAVE: You can put that document 16:49:08

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1 aside for now. 16:49:10  
2 BY MR. BAVE: 16:49:12  
3 Q Was the competitors' pricing information 16:49:12  
4 that was collected an important factor in Circuit 16:49:13  
5 City's price center? 16:49:17  
6 MR. LAHAD: Vague. 16:49:20  
7 THE WITNESS: Only important on a short 16:49:22  
8 term market by market store by store type of 16:49:26  
9 information. 16:49:29  
10 Competitors' advertising pricing was 16:49:31  
11 probably more important because of the 16:49:34  
12 visibility of it. I hope that answers your 16:49:37  
13 question. 16:49:44  
14 BY MR. BAVE: 16:49:45  
15 Q We discussed a couple different types of 16:49:45  
16 ways that competitive information was collected 16:49:47  
17 within Circuit City, right? 16:49:51  
18 A Correct. 16:49:51  
19 Q How was this competitive intelligence 16:49:52  
20 shared within the corporate structure of Circuit 16:49:55  
21 City? 16:49:58  
22 MR. LAHAD: Asked and answered. 16:49:58  
23 THE WITNESS: Since the person who is 16:49:59  
24 ultimately responsible for the product and 16:50:04  
25 the price of the product is the buyer, that 16:50:07

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1 information will make its way up to the buyer 16:50:12  
2 based on the frequency, based on the severity 16:50:17  
3 of the difference in grabbing their attention 16:50:26  
4 from that viewpoint, but we also had policies 16:50:32  
5 as you saw earlier that said, "If you see 16:50:35  
6 this, do that." 16:50:38  
7 BY MR. BAVE: 16:50:39  
8 Q Was it collected within one database 16:50:40  
9 within the company that people could go and see? 16:50:42  
10 A No. 16:50:44  
11 Q Yes? Sorry? 16:50:45  
12 A No. Not for this whole period of time. 16:50:47  
13 There was a process for reacting. I hope I have 16:50:53  
14 this correct. So we had a system where we 16:50:59  
15 downloaded the prices we discussed earlier, Cesar, 16:51:04  
16 or an ad system, there were several different 16:51:08  
17 names for it. 16:51:11  
18 So you could go in and see that data, 16:51:12  
19 and say, "We reacted. So we <sup>we</sup> ~~was~~ as far as 16:51:15  
20 reporting goes. You are capturing your reaction, 16:51:24  
21 not the actual report." 16:51:27  
22 Let me also note that buyers can see 16:51:30  
23 what prices their products are being sold at, and 16:51:33  
24 if they see an anomaly, they can drill down and 16:51:39  
25 find out where that occurred, and then they can go 16:51:43

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1 in, and ask, "Why is Brandsmart \$100 less than 16:51:48  
2 everybody? Why is Brandsmart Market \$100 less 16:51:54  
3 than everybody else is because Brandsmart has this 16:51:57  
4 price for \$100 below." 16:52:00  
5 Q Today we have discussed competitive 16:52:02  
6 shopping as one of the ways Circuit City gathered 16:52:04  
7 competitive intelligence, is that right? 16:52:07  
8 A Yes. 16:52:08  
9 Q Did Circuit City have specific 16:52:11  
10 guidelines on what to do and what not to do when 16:52:13  
11 an employee was shopping at a competitor's store? 16:52:15  
12 A I am not sure exactly what you are 16:52:20  
13 asking. 16:52:22  
14 Q You mentioned certain training that the 16:52:24  
15 store employees went through. Was a component of 16:52:26  
16 that how to handle or how to actually go and do 16:52:30  
17 this competitive shopping in the different 16:52:33  
18 regions? 16:52:36  
19 A Yes, we did not want to be disruptive in 16:52:36  
20 any way, shape or form, and we were not out to 16:52:42  
21 sabotage anybody. 16:52:46  
22 We were out to get the information with 16:52:47  
23 the least amount of interaction that could can get 16:52:50  
24 away with. 16:52:57  
25 They were specifically told, "Do not 16:52:58

54 (Pages 210 - 213)

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1 discuss anything that Circuit City does with 16:53:03  
2 anybody else or how they run their business." We 16:53:06  
3 didn't do that. 16:53:11  
4 Q Were they given a check list of products 16:53:12  
5 to go through on certain store visits? 16:53:14  
6 A As you saw in one of the ones where it 16:53:17  
7 says, "sign a calendar", they would be given a 16:53:19  
8 section of product or a description of product 16:53:25  
9 like, "Go shop all the projection televisions. Go 16:53:29  
10 shop all the CRT televisions. Go shop a category 16:53:31  
11 or class or some subset thereof," and if there was 16:53:36  
12 some reason they might say, "The last three weeks 16:53:42  
13 in a row this brand has been below a price. Go 16:53:46  
14 find out what's going on with that brand with this 16:53:50  
15 competitor." 16:53:52  
16 Q During these competitive shops, did 16:53:54  
17 Circuit City employees ever purchase a good from a 16:53:57  
18 competing store? 16:53:59  
19 A Not as policy. I don't know of any case 16:54:03  
20 where they would have. 16:54:10  
21 Q So it was purely an information 16:54:12  
22 gathering exercise? 16:54:14  
23 A Yes. 16:54:14  
24 Q In addition to the retail pricing, what 16:54:15  
25 other factors were the employees observing when 16:54:17

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1 they would do these competitive shops? 16:54:20  
2 A You are wanting to know what the 16:54:23  
3 customer experience is and you are trying to 16:54:26  
4 compare that with the Circuit City experience. 16:54:29  
5 For example, you might get as close as 16:54:34  
6 saying, "If I buy this, how fast can you deliver 16:54:37  
7 it to me?" You would go, "Our delivery is backed 16:54:41  
8 up for a week and he can deliver it today, so we 16:54:45  
9 are at a disadvantage." 16:54:48  
10 You're trying to understand everything 16:54:50  
11 that has to do with the customer experience. 16:54:52  
12 Do they have the product in stock? Do 16:54:55  
13 they want to sell it? Are they doing everything 16:55:00  
14 they can to tell you that it is a horrible product 16:55:04  
15 or that it is the best thing since sliced bread? 16:55:09  
16 What are they trying to sell to go with 16:55:15  
17 it and what are they saying about competitors like 16:55:17  
18 ourselves? 16:55:23  
19 Q Is one of the things they would check is 16:55:24  
20 upcoming promotional activities that the store is 16:55:26  
21 going to offer? 16:55:29  
22 A Yes, I can't say that one sells, one 16:55:34  
23 person doing a shop might say is it going to go on 16:55:38  
24 sale, but that was not our direction. 16:55:41  
25 We were not trying to get our 16:55:44

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1 competitor's ad information before it got public. 16:55:49  
2 Q It would be helpful to know if a 16:55:52  
3 competitor is going to be running a coming 16:55:53  
4 promotion, correct? 16:55:55  
5 A It would be helpful, but in general 16:55:55  
6 that's not the way we did business. 16:56:01  
7 Q In general, are there instances you are 16:56:04  
8 aware of where that type of information was 16:56:06  
9 obtained on store shops? 16:56:08  
10 A Not in reference to CRT. I was in a 16:56:12  
11 store where a customer walked in with a 16:56:17  
12 competitor's ad that had not been published yet, 16:56:20  
13 and he wanted me to match the price and there's 16:56:24  
14 not much I can do about it, he has brought it to 16:56:28  
15 me. 16:56:31  
16 Q Some of the promotional activities 16:56:31  
17 during certain seasons were released pretty far in 16:56:34  
18 advance of the date, for instance, maybe Black 16:56:36  
19 Friday, is that right? 16:56:39  
20 A If it's out there on the web, we are out 16:56:41  
21 there looking at it. If it is public information, 16:56:42  
22 we are doing our business to find out. 16:56:45  
23 Q Because that would allow you to know 16:56:47  
24 what your competitors are going to be charging up 16:56:48  
25 in upcoming periods? 16:56:50

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1 A Correct. 16:56:52  
2 Q That will allow you to react to it 16:56:53  
3 better? 16:56:53  
4 A Correct. 16:56:54  
5 Q Did Circuit City employees ever collect 16:56:56  
6 information that was not readily ascertainable in 16:57:00  
7 walking around the store? 16:57:02  
8 MR. LAHAD: Asked and answered. 16:57:04  
9 THE WITNESS: By posing as customers 16:57:06  
10 they might get additional information, yes. 16:57:10  
11 BY MR. BAVE: 16:57:12  
12 Q They would do that by having discussions 16:57:13  
13 with the competitors' source sales staff? 16:57:15  
14 A I would not call it discussions. They 16:57:17  
15 would go in and say, "I am looking for a 16:57:20  
16 television," and role play the customers. 16:57:23  
17 Q And they were not going in representing 16:57:27  
18 that they are from Circuit City. They would go in 16:57:29  
19 and act -- 16:57:30  
20 A No. 16:57:30  
21 Q -- as a person off the street? 16:57:31  
22 A No. Sorry interrupt you. No. 16:57:31  
23 Q They would remove their Circuit City 16:57:37  
24 uniforms so they would look like a person walking 16:57:39  
25 in off the street? 16:57:43

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1 A Yes. 16:57:43  
2 Q Was the inventory level that a 16:57:46  
3 competitor's store had readily ascertainable when 16:57:47  
4 walking in to the retail store? 16:57:51  
5 MR. LAHAD: Say that again. 16:57:54  
6 THE WITNESS: It depends on the 16:57:55  
7 retailer. If they have stocked their product 16:57:57  
8 on the floor, then it is. If they have a 16:58:01  
9 hidden warehouse, it is not. 16:58:04  
10 BY MR. BAVE: 16:58:06  
11 Q When they were walking around the 16:58:07  
12 stores, how would they record the information that 16:58:08  
13 they were recording on? 16:58:10  
14 MR. LAHAD: Vague. 16:58:13  
15 THE WITNESS: There were lots of 16:58:15  
16 different tactics. People would talk to 16:58:15  
17 themselves, and end up having a recorder in 16:58:19  
18 their pocket. 16:58:23  
19 Some people would call their own 16:58:24  
20 answering machine and talk to themselves, 16:58:27  
21 but the amount of pricing that we were 16:58:29  
22 shopping was generally limited enough that 16:58:33  
23 all you were doing was looking for 16:58:36  
24 exceptions. 16:58:38  
25 For example, I would go in and shop for 16:58:41

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1 competition and I would walk out, and as 16:58:44  
2 soon as I walked out, I would write down the 16:58:46  
3 four exceptions that I found because you 16:58:50  
4 would have very few in general. 16:58:52  
5 BY MR. BAVE: 16:58:55  
6 Q In instances where employees were using 16:58:55  
7 recording devices, were those provided by Circuit 16:58:56  
8 City? 16:59:01  
9 A I don't know. 16:59:04  
10 Q Did Circuit City keep the recordings 16:59:06  
11 that these employees made during their competitive 16:59:09  
12 store visits? 16:59:13  
13 A No. No, this would have been on 16:59:14  
14 individual deciding that that was the way that 16:59:18  
15 made it easier for themselves. 16:59:19  
16 (Whereupon, Deposition Exhibit 2847 is marked for 16:59:22  
17 Identification.) 16:59:22  
18 MR. BAVE: Let me mark one more quickly. 16:59:22  
19 I am handing you what has been marked as 16:59:46  
20 Exhibit 2847 which is Bates No. CC 0397160. 16:59:46  
21 THE WITNESS: How much of this do you 17:00:54  
22 need me to read? 17:00:55  
23 MR. BAVE: I will direct you to specific 17:00:56  
24 portions. Let me know when you are 17:00:57  
25 familiarized overall. 17:01:00

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1 BY MR. BAVE: 17:01:01  
2 Q You mentioned earlier memos on the 17:01:01  
3 competitive shops, right? 17:01:04  
4 A Yes. 17:01:04  
5 Q Does this follow the format of 17:01:05  
6 competitive shop reports that you have seen? 17:01:08  
7 A No, because this is a buyer or an 17:01:10  
8 assistant buyer or somebody in the corporate team 17:01:15  
9 reporting back to a buyer. 17:01:19  
10 This is, yes, it's a type of shopping 17:01:24  
11 report, but it is not the most common kind. 17:01:33  
12 This is a market visit where because you 17:01:36  
13 would only do a market visit like this because the 17:01:40  
14 sales in that market were doing poorly. 17:01:44  
15 Because the sales were doing poorly they 17:01:47  
16 sent this group of people and it is almost always 17:01:50  
17 that case, they sent this group of people in to 17:01:55  
18 find out what the heck is going on. 17:01:55  
19 Q Under the Best Buy heading on the first 17:01:59  
20 page there under subsection one pricing, they are 17:02:02  
21 writing about asking an associate to check on the 17:02:05  
22 inventory of an item, do you see that? 17:02:08  
23 A Yes. 17:02:13  
24 Q So that indicates that the employees 17:02:14  
25 (sic) asked the employee to go back and check on 17:02:15

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1 the inventory? 17:02:18  
2 A Yes. 17:02:19  
3 MR. LAHAD: Calls for speculation, lacks 17:02:20  
4 foundation. 17:02:23  
5 BY MR. BAVE: 17:02:23  
6 Q Did you say "yes," sir? 17:02:23  
7 A Yes. 17:02:24  
8 Q Have you ever heard of a market reaction 17:02:25  
9 report in association with Best Buy? 17:02:31  
10 A I have not heard it specifically for 17:02:35  
11 Best Buy. It is sort of a common term. 17:02:38  
12 Q What does the term mean to you? 17:02:41  
13 A It means that it sounds like it means 17:02:43  
14 that it is their version of what we call CTC or 17:02:48  
15 our reaction. 17:02:52  
16 Q Would Circuit City in the normal course 17:02:55  
17 of business have access to Best Buy's market 17:02:57  
18 reaction report? 17:03:00  
19 A No. 17:03:00  
20 Q So that in this instance they were able 17:03:01  
21 view it because they asked the sales clerk to go 17:03:03  
22 in the back and check on inventory? 17:03:04  
23 MR. LAHAD: Misstates previous 17:03:08  
24 testimony, lacks foundation, calls for 17:03:10  
25 speculation. 17:03:12

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1 THE WITNESS: And I would just be 17:03:14  
2 speculating. I believe that -- 17:03:19  
3 MR. ROSS: If you are speculating, don't 17:03:24  
4 testify, but if you know about it, then you 17:03:25  
5 can testify about it. 17:03:25  
6 THE WITNESS: No. 17:03:26  
7 BY MR. BAVE: 17:03:26  
8 Q This information about how Best Buy 17:03:27  
9 conducted its shops that is contained in this 17:03:29  
10 report, that would be helpful information to 17:03:31  
11 Circuit City, correct? 17:03:34  
12 A It could be, yes. 17:03:36  
13 Q If you would turn to the next page under 17:03:38  
14 "Incredible Universe" have you ever heard of 17:03:44  
15 Incredible Universe? 17:03:46  
16 A Yes. 17:03:48  
17 Q What is Incredible Universe? 17:03:48  
18 A Incredible Universe was a division of 17:03:49  
19 Radio Shack Stores that were their super stores 17:03:53  
20 basically. They were larger than Circuit City 17:03:57  
21 Stores. They were approximately the size of 17:04:00  
22 Brandsmart Stores. 17:04:02  
23 Q What is your understanding of the first 17:04:03  
24 bullet there under "Pricing" what is going on? 17:04:05  
25 A My understanding would be that they 17:04:36

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1 represented that they had been to the Best Buy and 17:04:39  
2 that they had seen this price on a 31 inch OE, and 17:04:42  
3 would Incredible Universe match it, and they said 17:04:47  
4 that they would, but since they were not able to 17:04:52  
5 verify that Best Buy actually had them in 17:04:56  
6 inventory, they did not match it. 17:04:58  
7 Q Was it normal during the course of the 17:05:00  
8 competitive shop that you test another 17:05:03  
9 competitor's price match policies? 17:05:06  
10 A You would want to understand, and this 17:05:08  
11 is very intense type of shopping. When you say 17:05:10  
12 "normal" this is extraordinary. 17:05:15  
13 Because you have got to put together a 17:05:21  
14 group of merchants and send them out to a market 17:05:24  
15 to understand what's going on in the market and 17:05:29  
16 understanding how the competition reacts and how 17:05:32  
17 they drop price or anything that they do that we 17:05:41  
18 don't know that they are doing it would be 17:05:44  
19 important. 17:05:46  
20 Q Was it extraordinary to ask competitors 17:05:47  
21 to go check inventory? 17:05:50  
22 MR. LAHAD: Misstates the testimony. 17:05:53  
23 THE WITNESS It wouldn't be 17:05:55  
24 extraordinary to ask them to check inventory 17:05:57  
25 because if you are a customer and you wanted 17:05:59

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1 to buy the product you would also want to 17:06:03  
2 know if they have it in stock, so as 17:06:05  
3 testified earlier, knowing in stock levels it 17:06:08  
4 is to a degree it is publicly available which 17:06:12  
5 is, "Can I buy this?" is important, yes, I 17:06:18  
6 mean, it is helpful. 17:06:21  
7 BY MR. BAVE: 17:06:22  
8 Q How often did Circuit City run these 17:06:22  
9 more intense competitive shops with its 17:06:25  
10 merchandising team? 17:06:28  
11 A You could go and be somewhat random, but 17:06:31  
12 you can go for a very long period of time. You 17:06:37  
13 may not have any in a year or you may have based 17:06:39  
14 on business, say, "We are going to send out two or 17:06:45  
15 three teams to four or five markets this week." 17:06:48  
16 There was no rhyme or reason. Some of 17:06:54  
17 it had to do with workload and did you have the 17:06:56  
18 time and the resources to deploy it this way. 17:07:00  
19 Q I just want to touch the low price 17:07:04  
20 guaranty that we discussed a little bit earlier 17:07:07  
21 today. 17:07:09  
22 MR. LAHAD: Before you get there, can we 17:07:09  
23 take a break or do you have a lot left? 17:07:11  
24 MR. BAVE: Just a few more questions and 17:07:16  
25 then I will be done if you want to wait. If 17:07:16

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1 you can wait, sir? 17:07:17  
2 THE WITNESS: I can wait. 17:07:18  
3 BY MR. BAVE: 17:07:21  
4 Q Before Circuit City would agree to match 17:07:21  
5 a price, they have to verify their competitor's 17:07:26  
6 price, correct, under the low price guaranty? 17:07:30  
7 A Yes, the low-price guaranty specifically 17:07:33  
8 talked about an advertised price so the competitor 17:07:37  
9 advertised the price we would do it. 17:07:42  
10 That part was easy to verify and if we 17:07:46  
11 were matching a price because we were selling the 17:07:50  
12 product, then you look for other ways to try to 17:07:54  
13 verify the price. 17:08:00  
14 Q It also would verify that the competitor 17:08:01  
15 had the item in stock before you matched the 17:08:03  
16 price, is that right? 17:08:06  
17 A Yes, and that is tough because you are a 17:08:06  
18 person who is doing the confirmation if they are 17:08:15  
19 talking about reaction type of time. 17:08:23  
20 You have got a customer standing there, 17:08:25  
21 so there's only so much you can do. Maybe the 17:08:26  
22 customer gives you card that says that they have 17:08:31  
23 got a quote on this product. 17:08:33  
24 You can call the competitor, and say, "I 17:08:36  
25 am interested in su and so and can I buy it?" 17:08:40

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|----------|--|----------|----------|--|----------|
| 1        | Whether you got truthful information or            | 17:08:45 | 1        | A Yes.   | 17:15:29 |
| 2        | not it is tough.                                   | 17:08:50 | 2        | Q Did the type of rebates differ by                | 17:15:30 |
| 3        | Once you're able to go out online and              | 17:08:53 | 3        | vendor, so for example, did the volume rebates     | 17:15:37 |
| 4        | find out whether the customer had the product      | 17:08:55 | 4        | that Panasonic North America offered differ from   | 17:15:42 |
| 5        | because you could buy it through the Internet that | 17:08:58 | 5        | those offered by other vendors?                    | 17:15:46 |
| 6        | was very different.                                | 17:09:02 | 6        | A In what way?                                     | 17:15:47 |
| 7        | Q So one of the ways Circuit City would            | 17:09:04 | 7        | Q For example, did Panasonic North America         | 17:15:49 |
| 8        | verify a competitor's price was to pick up the     | 17:09:06 | 8        | offer a higher percentage of rebate or cash back   | 17:15:54 |
| 9        | phone and call that competitor to get the price?   | 17:09:09 | 9        | or cash discounts for certain things as opposed to | 17:16:02 |
| 10       | A Again, acting as a customer saying,              | 17:09:12 | 10       | other vendors?                                     | 17:16:06 |
| 11       | "Look, I was in earlier, and I saw this on sale    | 17:09:17 | 11       | MR. LAHAD: Compound and vague.                     | 17:16:08 |
| 12       | for so and so, is it still on sale?" They might    | 17:09:22 | 12       | THE WITNESS: I am aware of them                    | 17:16:09 |
| 13       | say, "I don't know. We are busy. Come see for      | 17:09:26 | 13       | being materially different from other types        | 17:16:11 |
| 14       | yourself." They might say, "Give me a minute and   | 17:09:30 | 14       | of programs that we dealt with because every       | 17:16:14 |
| 15       | I will go find out," and so on.                    | 17:09:33 | 15       | one of these were singular type of activities      | 17:16:19 |
| 16       | Q Was it necessary to act as a potential           | 17:09:35 | 16       | for the most part.                                 | 17:16:23 |
| 17       | customer because the competitor would not give the | 17:09:38 | 17       | When you are talking about a sell                  | 17:16:24 |
| 18       | information if it was circuit identified as the    | 17:09:40 | 18       | through they could vary from the same              | 17:16:25 |
| 19       | collar?  | 17:09:43 | 19       | supplier based on whatever factors they are        | 17:16:33 |
| 20       | MR. LAHAD: Calls for speculation.                  | 17:09:46 | 20       | using.   | 17:16:35 |
| 21       | THE WITNESS: Right. We would never                 | 17:09:47 | 21       | BY MS. ARGUELLO:                                   | 17:16:36 |
| 22       | identify ourselves as Circuit City "and I          | 17:09:48 | 22       | Q Were these programs subject to                   | 17:16:38 |
| 23       | want to know your price." That was not our         | 17:09:51 | 23       | negotiation with Panasonic North America?          | 17:16:43 |
| 24       | policy practice. Just not the way you do           | 17:09:53 | 24       | A Yes.   | 17:16:46 |
| 25       | business.  | 17:09:57 | 25       | Q Was the negotiation on a model by model          | 17:16:47 |
| Page 227 |  |          | Page 229 |  |          |
| 1        | MR. BAVE: Thank you Those are all the              | 17:09:58 | 1        | basis?   | 17:16:50 |
| 2        | questions I have.                                  | 17:09:58 | 2        | A It could be model by model, but it could         | 17:16:52 |
| 3        | THE VIDEOGRAPHER: The time is                      | 17:10:01 | 3        | be program, meaning, "I will buy five televisions  | 17:16:56 |
| 4        | approximately 5:10. We are off the record.         | 17:10:03 | 4        | from you," so it is based on all of that.          | 17:16:59 |
| 5        | (On resuming after a short recess.)                | 17:14:45 | 5        | It could be based at a senior level that           | 17:17:02 |
| 6        | THE VIDEOGRAPHER: The time is                      | 17:14:45 | 6        | the buyer wouldn't be involved in which would be   | 17:17:06 |
| 7        | approximately 5:14 p.m. We are back on             | 17:14:46 | 7        | cumulative of all the various departments buying   | 17:17:11 |
| 8        | record.  | 17:14:50 | 8        | from a particular vendor.                          | 17:17:13 |
| 9        | MS. ARGUELLO: Hi, Mr. Deason.                      | 17:14:51 | 9        | Q Do you recall whether any vendor was             | 17:17:15 |
| 10       | THE WITNESS: Hi.                                   | 17:14:51 | 10       | more competitive in terms of, for example, volume  | 17:17:18 |
| 11       | MS. ARGUELLO: My name is Sofia                     | 17:14:54 | 11       | rebates?   | 17:17:23 |
| 12       | Arguello. I work for the law firm Winston &        | 17:14:54 | 12       | MR. LAHAD: Vague.                                  | 17:17:24 |
| 13       | Strawn and we represent the Panasonic              | 17:14:56 | 13       | THE WITNESS: I do not remember one                 | 17:17:25 |
| 14       | defendants in this litigation.                     | 17:14:59 | 14       | competitor being more, no.                         | 17:17:27 |
| 15       | EXAMINATION BY MS. ARGUELLO:                       | 17:15:00 | 15       | BY MS. ARGUELLO:                                   | 17:17:31 |
| 16       | Q I just have a few more questions for             | 17:15:00 | 16       | Q In your negotiations with Panasonic              | 17:17:34 |
| 17       | you. We mentioned earlier that Circuit City had    | 17:15:02 | 17       | North America, did Circuit City mention the        | 17:17:38 |
| 18       | promotional programs with many of its vendors.     | 17:15:07 | 18       | non-price terms of other vendors?                  | 17:17:40 |
| 19       | Do you recall whether it had any                   | 17:15:10 | 19       | A We would always refer to whether they            | 17:17:46 |
| 20       | promotional programs with Panasonic North America? | 17:15:11 | 20       | were competitive. We might say, "You are not       | 17:17:53 |
| 21       | A When you saw promotional programs, are           | 17:15:16 | 21       | giving us as much ad money as I am getting from    | 17:17:59 |
| 22       | you talking about MDF funds?                       | 17:15:17 | 22       | others." It wouldn't be specific, but it might be  | 17:18:03 |
| 23       | Q I am talking about MDF funds or volume           | 17:15:19 | 23       | relative.  | 17:18:13 |
| 24       | rebates, or promotional allowances, any of the     | 17:15:23 | 24       | They would see the results of that                 | 17:18:15 |
| 25       | programs that we discussed earlier today?          | 17:15:27 | 25       | because they might -- these type of conversations  | 17:18:17 |

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|----------|---|----------|---|
| 1        | I would happen like, "Hey, you're advertising 17:18:22      | 1        | I know how to answer the frequency. 17:21:01                |
| 2        | Samsung all the time and you are not advertising 17:18:25   | 2        | Q No, that was helpful. 17:21:03                            |
| 3        | Panasonic. Why?" Well, it's, "They give us more 17:18:28    | 3        | A But it is a standard part of the 17:21:04                 |
| 4        | ad money." 17:18:30   | 4        | business that during the life cycle of a product, 17:21:06  |
| 5        | Q Would Circuit City ever ask Panasonic 17:18:32            | 5        | if it is not selling that there may be a reaction. 17:21:12 |
| 6        | North America to match the non-price terms of 17:18:36      | 6        | Q Would Circuit City in these instances go 17:21:14         |
| 7        | other vendors? 17:18:39                                     | 7        | to a vendor like Panasonic North America, and tell 17:21:19 |
| 8        | A In that same sort of way, they would 17:18:43             | 8        | them, "Your product is not selling, so we should 17:21:22   |
| 9        | say, "We would like you to give us X amount of 17:18:46     | 9        | renegotiate are non-cost terms?" 17:21:24                   |
| 10       | percentage," and that would make you competitive. 17:18:53  | 10       | A Yes. The early part of this period - 17:21:29             |
| 11       | The reason I am hesitating is because we 17:18:59           | 11       | the very early part of this period - my 17:21:33            |
| 12       | are not going to tell them what the otherwise guys 17:19:02 | 12       | understanding was that the vendors could not see 17:21:36   |
| 13       | are doing. 17:19:03   | 13       | our sales data, but for the majority of this 17:21:42       |
| 14       | Not in non-disclosure agreements. We 17:19:09               | 14       | period they could. 17:21:45                                 |
| 15       | are not going to say, "The other guy has given me 17:19:10  | 15       | So we did not even have to tell them 17:21:46               |
| 16       | \$2 million. You got to give me \$2 million as the 17:19:12 | 16       | what the sales were. They knew the sales were not 17:21:48  |
| 17       | way we train our buyers." Just, again, that is 17:19:16     | 17       | good. 17:21:51  |
| 18       | not the normal way we do business 17:19:20                  | 18       | Q Do you know what Circuit City's profit 17:21:55           |
| 19       | Q Would it be fair to say that you would 17:19:24           | 19       | margins were on finished products purchased from 17:21:58   |
| 20       | communicate that other vendors are offering more 17:19:26   | 20       | Panasonic North America? 17:22:01                           |
| 21       | competitive rebates as opposed to giving out 17:19:30       | 21       | A No. 17:22:02  |
| 22       | specific percentage? 17:19:33                               | 22       | Q Did Circuit City control which models it 17:22:03         |
| 23       | A Yes. 17:19:33   | 23       | wanted to have the MDF funds applied to? 17:22:10           |
| 24       | Q In your experience, how often would 17:19:34              | 24       | MR. LAHAD: Vague. 17:22:15                                  |
| 25       | Panasonic North America's non-price terms change 17:19:40   | 25       | THE WITNESS: I don't know what you mean 17:22:18            |
| Page 231 |   | Page 233 |   |
| 1        | over time? 17:19:44   | 1        | by applied to. 17:22:19                                     |
| 2        | MR. LAHAD: To be clear. When you say 17:19:46               | 2        | BY MS. ARGUELLO: 17:22:20                                   |
| 3        | "price," you mean price or costs as we have 17:19:47        | 3        | Q When Circuit City negotiated for an MDF 17:22:20          |
| 4        | been using it today? 17:19:51                               | 4        | fund with a vendor, did it specify on what 17:22:24         |
| 5        | MS. ARGUELLO: I am saying procurement 17:19:52              | 5        | specific product it was going to spend that MDF 17:22:30    |
| 6        | costs, but I was saying pricing from 17:19:54               | 6        | fund? 17:22:33  |
| 7        | Panasonic North America, so we can go either 17:19:56       | 7        | A They could. They wouldn't necessarily. 17:22:34           |
| 8        | way. 17:19:59   | 8        | Q In the cases where they would not 17:22:41                |
| 9        | Let me say procurement costs to keep 17:19:59               | 9        | specify what product, would they just generally 17:22:44    |
| 10       | constant with earlier. 17:20:01                             | 10       | just ask for an MDF fund? 17:22:45                          |
| 11       | MR. ROSS: That is the way we have been 17:20:02             | 11       | A Yes. 17:22:49   |
| 12       | doing it for seven hours. 17:20:03                          | 12       | Q Did Circuit City ever resist Panasonic 17:22:49           |
| 13       | THE WITNESS: Can you restate it? 17:20:04                   | 13       | North America's price proposals and insist on a 17:22:56    |
| 14       | BY MS. ARGUELLO: 17:20:05                                   | 14       | lower price per specific models? 17:22:59                   |
| 15       | Q Yes. How often did Panasonic North 17:20:05               | 15       | A As I discussed earlier, we would 17:23:02                 |
| 16       | America's non-cost terms change over time? 17:20:09         | 16       | certainly insist that if they did not do it that 17:23:08   |
| 17       | A Typically, you had an overall program 17:20:17            | 17       | we would not buy the product anymore, but we 17:23:12       |
| 18       | that would last for a year, and again, they would 17:20:21  | 18       | cannot physically make you do it. 17:23:14                  |
| 19       | be reviewed at about a six month break based on 17:20:25    | 19       | Q Did Circuit City have established price 17:23:22          |
| 20       | sell through, but it is constant from a viewpoint 17:20:31  | 20       | points for purchasing models which it would tell 17:23:25   |
| 21       | again of if something is not selling, then it 17:20:35      | 21       | Panasonic North America it had to meet in order 17:23:28    |
| 22       | would be common for Panasonic or any other vendor 17:20:41  | 22       | for Panasonic North America to get the business? 17:23:30   |
| 23       | to do some sort of reaction and that would end up 17:20:45  | 23       | MR. LAHAD: Vague. 17:23:34                                  |
| 24       | being ad money, sales money, that sort of thing. 17:20:50   | 24       | THE WITNESS: Price points meaning what? 17:23:35            |
| 25       | I can't give you a number or I don't 17:20:55               | 25       | BY MS. ARGUELLO: 17:23:38                                   |

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1 Q For example, did Circuit City ever say, 17:23:38  
2 "You have to meet a price point of \$100 or you 17:23:39  
3 will not get this business?" 17:23:46  
4 MR. LAHAD: Are you talking price point. 17:23:48  
5 Cost? 17:23:49  
6 THE WITNESS: (No response.) 17:23:49  
7 BY MR. ROSS: 17:23:49  
8 Q Did Circuit City ever tell Panasonic 17:23:53  
9 North America, "You have to meet a particular cost 17:23:56  
10 point," for example, "\$100, or you will not get 17:24:01  
11 this business?" 17:24:04  
12 A Yes. 17:24:05  
13 Q As a general matter, when Circuit City's 17:24:15  
14 procurement costs for a given Circuit City product 17:24:18  
15 changed, did Circuit City change the price of the 17:24:23  
16 CRT product accordingly to its customers? 17:24:24  
17 MR. LAHAD: Asked and answered. 17:24:29  
18 THE WITNESS: To re-answer it. We may 17:24:31  
19 or may not. 17:24:34  
20 BY MS. ARGUELLO: 17:24:37  
21 Q In what circumstances would you do that? 17:24:38  
22 MR. LAHAD: This is asked and answered 17:24:43  
23 as well. 17:24:44  
24 THE WITNESS: Right. Based on 17:24:44  
25 competitive environment. 17:24:47

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1 BY MS. ARGUELLO: 17:24:50  
2 Q In your experience, what is generally 17:24:51  
3 the scale of a cost decrease? 17:25:03  
4 MR. LAHAD: Vague. 17:25:08  
5 BY MS. ARGUELLO: 17:25:09  
6 Q Of a cost decrease in a CRT finished 17:25:09  
7 product? Are they relatively small like by a 17:25:13  
8 dollar or are they larger? 17:25:17  
9 MR. GRALEWSKI: Objection, form. 17:25:21  
10 THE WITNESS: I don't know that I could 17:25:24  
11 generalize beyond generally we are not 17:25:29  
12 dealing with a dollar because of all of the 17:25:34  
13 work involved. 17:25:37  
14 MR. LAHAD: Sorry, you said "aren't 17:25:39  
15 dealing with a dollar?" 17:25:40  
16 THE WITNESS: We are not dealing with 17:25:41  
17 something that small because it is a lot of 17:25:42  
18 work to do for a dollar, but it could happen 17:25:45  
19 and it does happen. 17:25:51  
20 BY MS. ARGUELLO: 17:25:53  
21 Q You said earlier that sometimes Circuit 17:25:53  
22 City could increase the price of the finished 17:26:10  
23 product to the customer by the increase in the 17:26:14  
24 procurement costs, but it generally depended on 17:26:17  
25 competitive circumstance, is that correct? 17:26:21

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1 A Yes. 17:26:22  
2 Q Were there any other factors other than 17:26:26  
3 competitive circumstances? 17:26:30  
4 A The manufacturers' suggested retail 17:26:31  
5 price would be another factor. Again, whether we 17:26:34  
6 had inventory excess or shortage, would be the 17:26:39  
7 other factor. 17:26:44  
8 Q To the extent you could implement those 17:26:51  
9 cost increases into your price increases, would 17:26:54  
10 there generally be a lag between the change and 17:27:00  
11 procurement costs and the change in retail price? 17:27:02  
12 MR. LAHAD: Vague. 17:27:05  
13 THE WITNESS: I am confused. Can you 17:27:07  
14 ask me that again? I am sorry. 17:27:20  
15 BY MS. ARGUELLO: 17:27:21  
16 Q In the circumstances where an increase 17:27:22  
17 in procurement costs was able to translate into an 17:27:26  
18 increase in retail price, was there a lag between 17:27:29  
19 those two increases or did it happen 17:27:33  
20 simultaneously? 17:27:37  
21 MR. LAHAD: Same objection. 17:27:38  
22 THE WITNESS: It could be either way. 17:27:40  
23 BY MS. ARGUELLO: 17:27:41  
24 Q In which cases would you be able to do 17:27:56  
25 it simultaneously? Can you think of any examples? 17:27:59

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1 A If we were told that manufacturers' 17:28:02  
2 suggested retail price was going down by \$50, and 17:28:06  
3 that the cost was going down by \$75, we would key 17:28:09  
4 that in, and say, "Let's do this instantly," and 17:28:14  
5 it happened to match our standard downloads for 17:28:19  
6 the stores, so it wasn't two days before the next 17:28:24  
7 download, or one day after, or something like 17:28:31  
8 this. 17:28:34  
9 It had to match the period that we 17:28:35  
10 downloaded. We did not always download every day. 17:28:38  
11 Q If price changes were to be implemented, 17:28:51  
12 what steps were taken by Circuit City? 17:28:53  
13 A If price changes were to be made? 17:28:58  
14 Q Correct. 17:29:01  
15 A The steps are to download it in our 17:29:01  
16 system so that it shows up and gets communicated 17:29:08  
17 to the stores, and again, they have set tagging 17:29:11  
18 days, or set times to tag, so you want to try to 17:29:15  
19 stay with that cycle so that you do not have a 17:29:19  
20 price that is not tagged properly, and other than 17:29:22  
21 that, I do not know what other types of steps you 17:29:27  
22 are talking about. 17:29:30  
23 Q Was it the same across all retail stores 17:29:32  
24 if you did implement a price change? 17:29:36  
25 A We had the ability to download it for 17:29:38

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1 I everybody if we wanted to or to download it for 17:29:41  
2 one person if we wanted to. 17:29:44  
3 Q How were stores notified of the price 17:29:46  
4 change? 17:29:49  
5 A They knew that on a standard day that 17:29:49  
6 they would get a new PSB and that they need to go 17:29:52  
7 price to that PSB. 17:29:56  
8 Q Would the same price change have been 17:30:00  
9 made online? 17:30:02  
10 A It could be and it could not be. 17:30:03  
11 MS. ARGUELLO: I have no further 17:30:10  
12 questions. 17:30:11  
13 MR. ROSS: Any other defendants on the 17:30:13  
14 phone? 17:30:14  
15 MR. ROBERTS: Yes, this is John Roberts, 17:30:16  
16 the Thomson defendant. 17:30:16  
17 EXAMINATION BY MR. ROBERTS 17:30:20  
18 Q I just have a couple quick questions. 17:30:20  
19 Thank you, Mr. Deason. When did Circuit City 17:30:22  
20 discover the existence of the alleged price 17:30:26  
21 conspiracy in the CRT industry that is the subject 17:30:29  
22 of its complaint in this case? 17:30:31  
23 A I do not know. 17:30:33  
24 MR. ROBERTS: I would ask my colleague, 17:30:38  
25 Ms. Lin, if she could hand the witness the 17:30:38

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1 exhibit that I asked her to bring, I would 17:30:42  
2 really appreciate that, and to mark it as the 17:30:45  
3 next exhibit. 17:30:47  
4 (Whereupon, Deposition Exhibit 2849 is marked for 17:30:47  
5 identification.) 17:30:47  
6 MS. LIN: I will hand the witness a 17:30:51  
7 document marked Exhibit 2849. 17:30:51  
8 THE WITNESS: Can I ask who this 17:30:58  
9 gentleman represents? 17:30:59  
10 MS. LIN: He represents Thomson. 17:31:02  
11 THE WITNESS: Thomson, okay. Thank 17:31:03  
12 you. 17:31:03  
13 MR. GAWLEY: This is Michael Gawley 17:31:03  
14 from Kirkland. What is the Bates stamp on 17:31:03  
15 that exhibit? 17:31:08  
16 MS. LIN: It is the Thomson complaint, 17:31:11  
17 the Circuit City complaint against Thomson 17:31:12  
18 and Mitsubishi. It doesn't have a Bates. 17:31:15  
19 MR. GAWLEY: Thank you. 17:31:18  
20 BY MR. ROBERTS: 17:31:19  
21 Q As has been represented to you, this is 17:31:26  
22 the complaint that Circuit City filed against the 17:31:28  
23 Thomson defendants in November 2013. If you could 17:31:30  
24 please turn to paragraph 240 in that exhibit. 17:31:34  
25 MR. ROSS: He is not going to answer any 17:31:58

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1 questions on 240. It is beyond the scope. 17:31:58  
2 MR. LAHAD: Yes. 17:32:00  
3 MR. ROSS: Next. 17:32:00  
4 MR. LAHAD: And maybe on the same R-240, 17:32:02  
5 is starts with Circuit City's claims were 17:32:03  
6 told at American Pipe. Is that what your 240 17:32:04  
7 is? 17:32:08  
8 MR. ROBERTS: I am not asking about 17:32:08  
9 American Pipe, sir. 17:32:09  
10 BY MR. ROBERTS: 17:32:10  
11 Q If you will see, sir, in paragraph 240, 17:32:10  
12 it states that claims were filed in this action in 17:32:15  
13 November 2007. Do you see that first entry there? 17:32:20  
14 THE WITNESS: Do you want me to answer? 17:32:25  
15 MR. ROSS: No, it is beyond the scope. 17:32:29  
16 Sorry. He is not a personal witness today. 17:32:30  
17 He is a 30(b)(6). It is not within the 17:32:32  
18 scope. 17:32:33  
19 MR. ROBERTS: I am asking him questions 17:32:34  
20 within the subject of Topic 20. 17:32:36  
21 MR. ROSS: No. I had conversations with 17:32:44  
22 Ms. Lin about this. You could talk about 17:32:46  
23 width, when it was at Circuit City, but we 17:32:48  
24 are not talking about anything after that. 17:32:51  
25 If you want to ask him what he knew 17:32:54

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1 when he was at Circuit City about any kind 17:32:55  
2 of suspicions or knowledge of a conspiracy, 17:32:58  
3 as we say that in our complaint, you can go 17:33:03  
4 ahead, otherwise it is beyond the scope. 17:33:06  
5 MR. ROBERTS: I will represent to you, 17:33:10  
6 sir, that the first complaints in this action 17:33:12  
7 were filed in November 2007. 17:33:14  
8 BY MR. ROBERTS: 17:33:18  
9 Q Immediately after those complaints were 17:33:18  
10 filed, what action did Circuit City take to 17:33:21  
11 discover if it had any claims against the Thomson 17:33:24  
12 defendants? 17:33:28  
13 MR. ROSS: Beyond the scope. 17:33:28  
14 MR. ROBERTS: Sorry, was there an 17:33:29  
15 objection? I could not hear it. 17:33:29  
16 MR. ROSS: I am instructing him not to 17:33:33  
17 answer. It is beyond the scope. 17:33:44  
18 BY MR. ROBERTS: 17:33:46  
19 Q When did Circuit City first suspect that 17:33:56  
20 the Thomson defendants were participants in the 17:33:59  
21 alleged conspiracy? 17:34:02  
22 MR. ROSS: Same instruction. 17:34:05  
23 MR. ROBERTS: Sir, this is squarely 17:34:14  
24 within Topic 20, as to when they first 17:34:15  
25 suspected the existence of the alleged 17:34:18

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1 conspiracy. I don't understand why you are 17:34:21  
2 objecting. 17:34:22  
3 MR. ROSS: You were not part of the 17:34:22  
4 negotiations of the topics and my discussions 17:34:24  
5 with Ms. Lin, sorry. 17:34:25  
6 We are not going beyond those 17:34:29  
7 discussions. The discussions were that the 17:34:32  
8 witness could testify as to any knowledge 17:34:33  
9 that he or Circuit City had prior to the 17:34:37  
10 liquidation while he was there and he has 17:34:41  
11 answered that today and the answer was none. 17:34:46  
12 Anything after that is beyond the scope. 17:34:49  
13 BY MR. ROBERTS: 17:34:58  
14 Q Before November 2007, did Circuit City 17:34:59  
15 conduct any investigations regarding the existence 17:35:02  
16 of the alleged antitrust conspiracy? 17:35:07  
17 MR. LAHAD: Asked and answered. 17:35:10  
18 MR. ROSS: That, you can answer. 17:35:13  
19 MR. LAHAD: You can answer that. 17:35:14  
20 THE WITNESS: I don't know. 17:35:14  
21 BY MR. ROBERTS: 17:35:16  
22 Q You don't know? Could you please turn 17:35:16  
23 to paragraph 214 in the complaint that is in front 17:35:19  
24 of you. 17:35:23  
25 The first sentence in paragraph 214 17:35:39

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1 states, "Over the course of the relevant period, 17:35:41  
2 the price of CRTs remains stable and in some 17:35:44  
3 instances went up in an unexplained manner despite 17:35:46  
4 the national trends in those technology products 17:35:49  
5 to go down over time." 17:35:51  
6 Did I read that correctly, sir? 17:35:54  
7 A I read it the same as you read it. 17:35:56  
8 Q But during the relevant period, did 17:36:00  
9 Circuit City conduct investigations as to why 17:36:04  
10 prices of CRTs seemed to be remaining stable 17:36:07  
11 instead of going down as somewhat expected? 17:36:11  
12 MR. ROSS: I instruct you not to answer. 17:36:14  
13 Beyond the scope. 17:36:15  
14 BY MR. ROBERTS: 17:36:34  
15 Q During the relevant period, did Circuit 17:36:35  
16 City monitor the prices of CRTs as opposed to CRT 17:36:42  
17 products? 17:36:47  
18 MR. ROSS: I think that is beyond the 17:36:49  
19 scope, but I will let him answer. 17:36:50  
20 THE WITNESS: I would not know how or 17:36:52  
21 why they would. 17:36:55  
22 BY MR. ROBERTS: 17:36:56  
23 Q Is that answer no, sir? 17:36:57  
24 A No. The answer is no. 17:37:03  
25 Q Why didn't Circuit City conduct such an 17:37:11

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1 investigation of CRT product prices? 17:37:14  
2 MR. LAHAD: Asked and answered. 17:37:19  
3 THE WITNESS: (No response.) 17:37:20  
4 BY MR. ROBERTS: 17:37:20  
5 Q You can answer, sir. 17:37:29  
6 A I haven't seen anything that would make 17:37:32  
7 me believe that they had enough information to 17:37:35  
8 warrant an investigation. 17:37:39  
9 Q If you will look quickly, again, at 17:37:47  
10 Exhibit 2840. This was the exhibit that Ms. Lin 17:37:51  
11 was showing you earlier today. 17:37:53  
12 MR. LAHAD: Sorry, which exhibit? 17:37:58  
13 MR. ROBERTS: 2840. 17:38:01  
14 BY MR. ROBERTS: 17:38:02  
15 Q This is the exhibit that you may recall 17:38:28  
16 you testified was a document that Circuit City 17:38:30  
17 prepared in advance of discussions with 17:38:33  
18 representatives of the Thomson defendants, is that 17:38:35  
19 correct? 17:38:38  
20 A Yes, is in preparation for a meeting 17:38:40  
21 with Thomson personnel. 17:38:44  
22 Q Looking again at the second page, the 17:38:47  
23 second major bullet points, it states, "Thomson is 17:38:49  
24 pricing products of similar quality and features 17:39:00  
25 to other competitors and prices that are below 17:39:05

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1 those other competitors and reducing the profits 17:39:09  
2 of retailers," is it your understanding that this 17:39:14  
3 practice of Thomson was reducing the profits of 17:39:18  
4 Circuit City? 17:39:22  
5 MR. LAHAD: Objection, misquotes and 17:39:25  
6 misstates the document. 17:39:27  
7 MR. GRALEWSKI: Objection, form. 17:39:29  
8 THE WITNESS: Now that the objections 17:39:32  
9 have been done, I forgot what you asked. I 17:39:38  
10 am sorry. 17:39:41  
11 MR. ROBERTS: That's okay. Maybe my 17:39:42  
12 question was unclear. 17:39:43  
13 BY MR. ROBERTS: 17:39:46  
14 Q Was it your understanding that Thomson's 17:39:46  
15 practice of pricing its products below those of 17:39:48  
16 other similar competitors were pricing was 17:39:53  
17 reducing the profitability of Circuit City? 17:39:54  
18 MR. LAHAD: Lacks foundation, assumes 17:40:02  
19 facts. 17:40:03  
20 MR. GRALEWSKI: Objection, form. 17:40:05  
21 THE WITNESS: As I have testified 17:40:07  
22 earlier, anything that reduces the average 17:40:08  
23 retail of products reduces the profitability 17:40:11  
24 of Circuit City Stores. 17:40:14  
25 Could reduce it unless they were in an 17:40:18

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1 increase in sales that would offset the loss 17:40:26  
2 in profits from the average retail to 17:40:29  
3 client. 17:40:33  
4 BY MR. ROBERTS: 17:40:33  
5 Q Looking again at bullet point 2 here, is 17:40:37  
6 it your understanding that this is representing 17:40:40  
7 that Thomson was setting a comparatively low 17:40:43  
8 suggestion manufacturer pricing for these 17:40:48  
9 products? 17:40:50  
10 MR. GRALEWSKI: Objection, form. 17:40:52  
11 THE WITNESS: He says specifically that 17:40:56  
12 he doesn't understand that the GE product 17:40:58  
13 position well below other (similarly featured 17:41:02  
14 product.) Does that answer your question? 17:41:05  
15 BY MR. ROBERTS: 17:41:08  
16 Q I guess I am saying that that is the 17:41:08  
17 manufacturer's suggested price? 17:41:11  
18 MR. LAHAD: It assumes facts. Calls for 17:41:14  
19 speculation. 17:41:17  
20 THE WITNESS: (No response) 17:41:17  
21 BY MR. ROBERTS: 17:41:26  
22 Q You can answer, sir. 17:41:27  
23 A Again the question is -- well, what is 17:41:29  
24 the question? 17:41:34  
25 Q I guess I am trying to understand 17:41:36

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1 exactly what your understanding is of what this 17:41:37  
2 document is representing about how Thomson is 17:41:41  
3 positioning the products, and I am asking you, it 17:41:43  
4 says, "Thomson continues to build added value to 17:41:49  
5 GE product and position it way below all of the 17:41:51  
6 brands similarly featured products," is it saying 17:41:54  
7 that Thomson is setting a suggested manufacturer's 17:41:56  
8 retail price that is below what other 17:42:00  
9 manufacturer's are setting? 17:42:04  
10 MR. LAHAD: Again, lacks foundation. 17:42:06  
11 MR. GRALEWSKI: Objection, form. 17:42:08  
12 MR. LAHAD: Assumes facts. The document 17:42:09  
13 speaks for itself. 17:42:10  
14 THE WITNESS: Yes. 17:42:12  
15 BY MR. ROBERTS: 17:42:14  
16 Q How does the fact that Thomson is 17:42:14  
17 setting such a price will reduce the profitability 17:42:20  
18 of Circuit City? 17:42:22  
19 MR. GRALEWSKI: Objection, form. 17:42:28  
20 MR. LAHAD: Yes, vague. 17:42:29  
21 THE WITNESS: Again, anything that 17:42:31  
22 decreases the average retail, that Circuit 17:42:34  
23 City collects on a category of goods reduces 17:42:38  
24 or is more than likely to reduce the profits 17:42:44  
25 of that product unless there is a 17:42:48

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1 corresponding increase in unit sales to 17:42:51  
2 offset it. 17:42:53  
3 BY MR. ROBERTS: 17:42:54  
4 Q This bullet point discusses various 17:42:59  
5 different sizes of GE televisions in comparison to 17:43:03  
6 other brands of similar size. 17:43:06  
7 Is it fair to say that Circuit City 17:43:09  
8 earned different profit margins on different 17:43:12  
9 brands of televisions of the same size? 17:43:16  
10 MR. LAHAD: Vague. 17:43:21  
11 THE WITNESS: I don't think the piece of 17:43:22  
12 paper has anything to do with that, but as I 17:43:24  
13 testified earlier, we would expect different 17:43:27  
14 margins at different price points and so 17:43:30  
15 different sizes have different price points. 17:43:34  
16 BY MR. ROBERTS: 17:43:37  
17 Q I guess I am trying to get at the size 17:43:37  
18 issue, sir. Was margin correlated in a general 17:43:39  
19 way with the relative size of televisions that 17:43:44  
20 were sold by Circuit City? 17:43:48  
21 MR. LAHAD: Vague. 17:43:50  
22 THE WITNESS: Price point was more of a 17:43:52  
23 factor than size, but it could have been a 17:43:55  
24 factor, yes. 17:44:03  
25 BY MR. ROBERTS 17:44:04

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1 Q Did Circuit City earn different profit 17:44:05  
2 margins on televisions that were relatively full 17:44:09  
3 featured and higher quality than it did on lower 17:44:14  
4 featured lower-quality televisions? 17:44:18  
5 MR. LAHAD: Asked and answered. 17:44:21  
6 THE WITNESS: The answer is yes. 17:44:21  
7 BY MR. ROBERTS: 17:44:23  
8 Q Was that consistent throughout the 17:44:24  
9 relevant period? 17:44:26  
10 A Yes. 17:44:27  
11 MR. ROBERTS: Nothing further. Thank 17:44:30  
12 you, sir. 17:44:31  
13 MR. ROSS: Bob, I think you wanted to 17:44:33  
14 ask a few. 17:44:34  
15 MR. GRALEWSKI: Yes, thank you. 17:44:36  
16 EXAMINATION BY MR. GRALEWSKI: 17:44:36  
17 Q Good afternoon, Mr. Deason. My name is 17:44:36  
18 Bob Grolewski and I represent Consumers of CRT TVs 17:44:42  
19 and Monitors many of whom likely bought from 17:44:48  
20 Circuit City who are suing CRT manufacturers and I 17:44:53  
21 have a couple of questions for you regarding MSRP. 17:44:58  
22 For CRT finished products during the 17:45:05  
23 relevant time period, was MSRP for a SKU ever set 17:45:11  
24 lower than Circuit City's cost for that SKU? 17:45:16  
25 A I do not know of such an example and 17:45:26

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1 that would be a very odd occurrence. 17:45:29  
2 Q What is your understanding of how 17:45:35  
3 generally speaking MSRP was set by vendors? 17:45:37  
4 A The manufacturer's suggested retail 17:45:43  
5 price was generally set by the vendor as the price 17:45:45  
6 that they believed was competitive in the 17:45:49  
7 marketplace. 17:45:58  
8 Q Do you have an understanding that 17:45:59  
9 anything else went into how particular MSRP was 17:46:00  
10 arrived at? 17:46:07  
11 A I don't have knowledge of how the 17:46:08  
12 vendors <sup>set</sup> it. 17:46:10  
13 Q Do you have an understanding that costs, 17:46:13  
14 a vendor cost, was a component of MSRP? 17:46:16  
15 A Again, the discussions that a buyer 17:46:24  
16 would have with a vendor about a manufacturer's 17:46:33  
17 suggested retail price would be about whether it 17:46:36  
18 was a competitive price or not. We would not be 17:46:39  
19 having discussions about what it cost them to 17:46:44  
20 build. 17:46:47  
21 Q What would you expect to happen based on 17:46:48  
22 your experience to MSRP if vendor costs went down? 17:46:51  
23 MS. LIN: Objection, calls for 17:47:03  
24 speculation. 17:47:04  
25 THE WITNESS: Since I don't know when 17:47:04

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1 vendors' costs went down, I am not sure that 17:47:06  
2 I have a reasonable expectation. 17:47:10  
3 BY MR. GRALEWSKI: 17:47:19  
4 Q I know that you have been testifying for 17:47:19  
5 a long time today. Just a little bit ago you used 17:47:21  
6 an example in an answer, I believe you talked 17:47:25  
7 about MSRP decreasing by \$75 and your Circuit 17:47:29  
8 City's cost decreasing by \$50 in that example, do 17:47:35  
9 you remember that testimony? 17:47:39  
10 A Yes. 17:47:40  
11 Q Why did you use that example? Do you 17:47:40  
12 have an understanding that a decrease in MSRP is 17:47:49  
13 typically related to a decrease in your costs? 17:47:54  
14 A Yes. 17:48:02  
15 Q For CRT finished products during the 17:48:11  
16 relevant time period, how often would MSRP change 17:48:14  
17 for a particular CRT finished product SKU? 17:48:19  
18 A As I testified earlier the 17:48:26  
19 manufacturer's suggested retail price was 17:48:32  
20 generally set for a year. 17:48:35  
21 It may change because it is not selling 17:48:38  
22 or it may change because there is an introduction 17:48:44  
23 of a new product. 17:48:47  
24 The standard review was about every six 17:48:49  
25 months, however any product that was not selling 17:48:56

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1 would be discussed and reviewed at any time. 17:48:59  
2 MR. GRALEWSKI: Thank you. Mr. Deason. 17:49:04  
3 I have no further questions at this time. 17:49:04  
4 MR. ROSS: Is there anybody else on the 17:49:09  
5 phone? We have a little bit of clean up 17:49:11  
6 though. 17:49:17  
7 MR. LAHAD: Right and I will just ask 17:49:17  
8 from here. 17:49:19  
9 EXAMINATION BY MR. LAHAD: 17:49:19  
10 Q Mr. Deason, earlier you testified about 17:49:20  
11 trips that you and other Circuit City buyers took 17:49:24  
12 abroad to visit CRT finished product vendors 17:49:25  
13 during the relevant time period, do you recall 17:49:27  
14 that? 17:49:31  
15 A Yes. 17:49:31  
16 Q Do you recall any of the specific CRT 17:49:32  
17 finished product vendors you visited during these 17:49:35  
18 trips abroad? 17:49:38  
19 A Yes. 17:49:39  
20 Q Did you visit Panasonic? 17:49:39  
21 MS. ARQUELLO: Object to form. 17:49:41  
22 THE WITNESS: Yes. 17:49:42  
23 BY MR. LAHAD: 17:49:44  
24 Q Did you and any other Circuit City 17:49:44  
25 buyers visit Hitachi? 17:49:44

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1 A Yes. 17:49:46  
2 MR. GAWLEY: Object to form. 17:49:52  
3 BY MR. LAHAD: 17:49:52  
4 Q Did you and any other Circuit City 17:49:57  
5 buyers visit Toshiba? 17:49:57  
6 MR. BAVE: Objection, vague and 17:50:04  
7 ambiguous. 17:50:04  
8 THE WITNESS: I was not party to any 17:50:05  
9 Toshiba visits, so I cannot speak to that, 17:50:07  
10 but I know that buyers went to all major 17:50:09  
11 suppliers and would have it on their agenda 17:50:18  
12 to visit Toshiba. 17:50:23  
13 BY MR. LAHAD: 17:50:24  
14 Q Did you and any other buyers visit 17:50:26  
15 Samsung? 17:50:27  
16 A Yes. 17:50:29  
17 Q What about LG? 17:50:30  
18 MS. LIN: Object to form. 17:50:33  
19 THE WITNESS: I was on a trip with 17:50:35  
20 buyers who visited LG, but I did not. 17:50:37  
21 BY MR. LAHAD: 17:50:40  
22 Q Did you or any other buyers visit 17:50:41  
23 Phillips? 17:50:43  
24 A Yes. 17:50:50  
25 Q And you testified earlier that during 17:50:52

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1 these trips and visits the vendors would, if I 17:50:56  
2 understood your testimony, present now or 17:50:58  
3 forthcoming products, is that accurate? 17:51:01  
4 A Yes. 17:51:02  
5 Q You also testified that during these 17:51:04  
6 presentations, vendors, I believe you used the 17:51:05  
7 term, "trial balloon," do you recall that? 17:51:09  
8 A Yes. 17:51:10  
9 Q Can you give me a little bit more 17:51:11  
10 explanation on what you meant by trial balloon? 17:51:12  
11 A They would say, "We have this product 17:51:16  
12 and we are going to sell this at \$999. Do you 17:51:19  
13 think that would be competitive?" 17:51:23  
14 Q \$999, meaning, the MSRP? 17:51:25  
15 A That is the manufacturer's suggested 17:51:27  
16 retail price and would that be a competitive 17:51:29  
17 manufacturer suggested retail price and we might 17:51:35  
18 give back information saying, "It is not 17:51:39  
19 competitive today because I already own a product 17:51:44  
20 that has more features on it than that, that I 17:51:46  
21 sell for \$799," or we might say, "We don't believe 17:51:48  
22 that that is going to be competitive going 17:51:53  
23 forward." 17:51:55  
24 Q When you say competitive, competitive 17:51:55  
25 where? 17:51:57

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1 A Competitive on our sales floor because 17:51:58  
2 we looked at and are contemplating buying other 17:52:00  
3 product that would make that product 17:52:07  
4 non-competitive. 17:52:09  
5 Q The sales force in the U.S., is that 17:52:11  
6 right? 17:52:13  
7 A Yes. 17:52:13  
8 Q You also testified if I understood your 17:52:16  
9 testimony that this was the start of what you said 17:52:18  
10 was, "One lung negotiation," to you recall that? 17:52:20  
11 A Yes. 17:52:23  
12 Q I want to fill in a little more of this 17:52:24  
13 long negotiation. After you have this visit 17:52:26  
14 abroad at these CRT finished product vendors 17:52:30  
15 sites, and you come home, who or what would — 17:52:32  
16 MR. LAHAD: Strike that. 17:52:39  
17 BY MR. LAHAD: 17:52:39  
18 Q What would be the next step? 17:52:39  
19 A Since you had seen things very early and 17:52:43  
20 sometimes we see product six months before it is 17:52:47  
21 going to be introduced, or even longer, the next 17:52:52  
22 step would be, "What have they done?" based on the 17:52:59  
23 feedback that you have given them, or that other 17:53:02  
24 customers had given them, and so there would be an 17:53:06  
25 update of, "You guys saw this once before, but 17:53:10

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1 this is what we're now going to do. We are now 17:53:14  
2 going to put the button on the left hand side. 17:53:18  
3 "It now looks like this. and oh, by the 17:53:20  
4 way, the manufacturer's suggested retail price is 17:53:23  
5 going to be this." 17:53:26  
6 That conversation could happen on a 17:53:29  
7 return visit to a foreign country. It could 17:53:31  
8 happen by the foreign representatives coming to 17:53:33  
9 Circuit City or coming to a sales office in the 17:53:40  
10 U.S. and we meet them there. 17:53:44  
11 But you have to get that level of, "This 17:53:47  
12 is what we're going to offer and this is why the 17:53:50  
13 change that we have made." 17:53:56  
14 At that point we may have more 17:53:58  
15 information that says, "Sorry, but that is still 17:54:01  
16 not competitive," and so we may be giving an 17:54:04  
17 indication at that point to senior people from 17:54:10  
18 that vendor that it is still not right, and that 17:54:15  
19 they have got more work to do overall but it's 17:54:20  
20 starting. That's the next step. 17:54:27  
21 At some point they are going to say, 17:54:32  
22 "This is our assortment and this is what we're 17:54:34  
23 proposing that we sell it to you for." 17:54:38  
24 It's possible that the buyer would get 17:54:42  
25 ahead of that process, and say, "I would buy 17:54:46

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1 500,000 of these if you give me a cost of this." 17:54:53  
2 You would have continuous negotiations 17:54:58  
3 from there involving all of those people down to 17:55:01  
4 the point of finally making an agreement. 17:55:04  
5 Q To be clear, on behalf of Circuit City, 17:55:07  
6 it would be the buyer located in Richmond, 17:55:10  
7 Virginia? 17:55:12  
8 A That is correct. 17:55:12  
9 Q Earlier there were some questions 17:55:16  
10 regarding the use of cost information from one 17:55:17  
11 vendor with other vendors, do you recall that? 17:55:21  
12 A Yes. 17:55:23  
13 Q Let me ask you this. If a CRT finished 17:55:25  
14 product vendor decreased its costs to Circuit City 17:55:29  
15 for a class, or a product, would Circuit City use 17:55:32  
16 that information that cost information with other 17:55:38  
17 vendors at all? 17:55:41  
18 A No. 17:55:44  
19 Q Did Circuit City ever share specific 17:55:45  
20 costs information from one vendor with another 17:55:48  
21 vendor? 17:55:50  
22 A No. 17:55:51  
23 Q I want to point you to Exhibit 2845. 17:55:53  
24 It's the memo to the Sony file. I have a few 17:55:59  
25 questions specifically about the fourth bullet 17:56:15

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|---|--|
| <p>1 point that we talked about before. Do you need a 17:56:18<br/>2 second to re-read that bullet? 17:56:22<br/>3 A Yes. 17:56:24<br/>4 Q Please do. 17:56:25<br/>5 A I am familiar. 17:56:30<br/>6 Q Does this fourth bullet state that 17:56:32<br/>7 Thomson, Phillips, and Zenith will raise their two 17:56:34<br/>8 prices together after consulting with each other? 17:56:38<br/>9 A No. 17:56:40<br/>10 Q Is there any indication in this bullet 17:56:42<br/>11 or in any of Exhibit 2845 that Mr. Palumbo 17:56:44<br/>12 indicated that CRT makers were meeting to fix 17:56:49<br/>13 prices? 17:56:52<br/>14 A No. 17:56:52<br/>15 Q Is there anything in this bullet point 17:56:53<br/>16 or anywhere else in Exhibit 2845 that would lead 17:56:55<br/>17 you to believe that CRT manufacturers were meeting 17:56:59<br/>18 to conspire on fixing the prices of their 17:57:01<br/>19 products? 17:57:04<br/>20 A No. 17:57:04<br/>21 Q In your mind is the information in 17:57:06<br/>22 Exhibit 2845 specific enough for Circuit City to 17:57:09<br/>23 initiate investigation into CRT price fixing? 17:57:14<br/>24 MR. BAVE: Objection to form. 17:57:18<br/>25 THE WITNESS: No. 17:57:21</p> | <p>1<br/>2 UNITED STATES OF AMERICA )<br/>SS;<br/>3 DISTRICT OF COLUMBIA )<br/>4<br/>5 I, T. S. HUBBARD, JR., a Notary Public<br/>6 within and for the District of Columbia do hereby<br/>7 certify that the witness whose deposition is<br/>8 hereinbefore set forth was duly sworn and that the<br/>9 within transcript is a true record of the testimony<br/>10 given by such witness.<br/>11<br/>12 I further certify that I am not related<br/>13 to any of the parties to this action by blood or<br/>14 marriage and that I am in no way interested in the<br/>15 outcome of this matter.<br/>16<br/>17 IN WITNESS WHEREOF, I have hereunto set<br/>18 my hand this 5th day of May 2014.<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24 T. S. HUBBARD, JR.<br/>Commission Identification 237435<br/>Commission Expires April 30, 2018<br/>25</p> |
| <p>Page 259<br/>1 MR. LAHAD: Nothing further for you. 17:57:22<br/>2 Thank you. 17:57:23<br/>3 THE VIDEOGRAPHER: Are we done? There<br/>4 being no further matters, the time is<br/>5 approximately 5:57 p.m. This deposition is<br/>6 concluded.<br/>7<br/>8 (Whereupon, the deposition concluded at<br/>9 5:57 and the witness is to read and sign with<br/>10 arrangements already on record with standing<br/>11 orders for transcripts.)<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17 STEVEN DEASON<br/>18<br/>19 Subscribed and sworn to before me<br/>20 this day of , 2014.<br/>21<br/>22<br/>23 NOTARY PUBLIC<br/>24<br/>25</p>   |  |

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[vendors - why's]

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[widely - zenith]

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1 MR. LAHAD: Nothing further for you, 17:57:22

2 Thank you. 17:57:23

3 THE VIDEOGRAPHER: Are we done? There  
4 being no further matters, the time is  
5 approximately 5:57 p.m. This deposition is  
6 concluded.

7

8 (Whereupon, the deposition concluded at  
9 5:57 and the witness is to read and sign with  
10 arrangements already on record with standing  
11 orders for transcripts.)

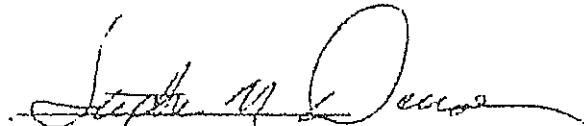
12

13

14

15

16

  
STEVEN DEASON (correct spelling is Stephen)

17

18

19 Subscribed and sworn to before me

20 this 21 day of MAY, 2014.

21

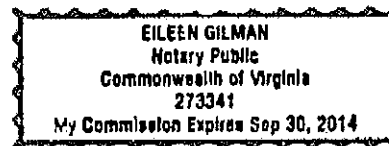
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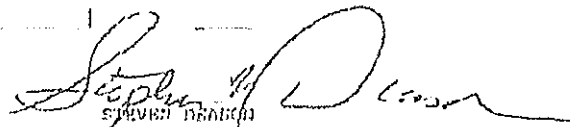


ERRATA SHEET  
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1250 BROADWAY  
NEW YORK, NEW YORK 10001  
212-267-6868

NAME OF CASE: IN RE: CRT Antitrust Litigation  
DATE OF DEPOSITION: April 23, 2014  
NAME OF DEPONENT: Steven Deason

| PAGE | LINE (S) | CHANGE                                   | REASON                    |
|------|----------|--|---------------------------|
| 2    | 5        | replace "Steven" with "Stephen"          | legal name, spelling      |
| 15   | 23       | replace "four" with "for"                | spelling, meaning         |
| 19   | 2        | replace "net" with "new"                 | misheard                  |
| 20   | 18       | replace "Shoclapper" with "Shuklapper"   | spelling                  |
| 24   | 22       | replace "displayed" with "display"       | misheard                  |
| 29   | 22       | replace "tell" with "sell"               | typo?                     |
| 31   | 5        | replace "it" with "each"                 | clarity                   |
| 43   | 13       | replace "no" with "other parties"        | Answer was not complete,  |
| 43   | 13 cont. | were sometimes part of the               | Corrected in testimony on |
| 43   | 13 cont. | negotiations"                            | pages 110-117 & 254-257   |
| 55   | 18       | replace "are going" with "are not going" | misheard                  |
| 67   | 8        | replace "funds" with "forms"             | misheard                  |
| 70   | 21       | replace "fect" with "factor"             | misheard                  |
| 71   | 14       | replace "and" with "on"                  | misheard                  |
| 75   | 13       | replace "town" with "Taiwan"             | misheard                  |

Continued on next page

  
STEVEN DEASON  
(correct spelling is Stephen)

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 21 DAY OF MAY, 2014

  
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9.30.2014  
MY COMMISSION EXPIRES:

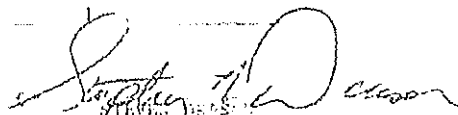


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NAME OF CASE: IN RE: CRT Antitrust Litigation  
DATE OF DEPOSITION: April 23, 2014  
NAME OF DEponent: Steven Deacon

| LINE | LINE(S) | CHANGE  | REASON              |
|------|---------|---|---------------------|
|      |         | Part Two - Continued from prior page                      |                     |
| 89   | 1       | replace "tranches" with "trucks"                          | misheard            |
| 89   | 25      | replace "business. Is it, are" with "business is it. Are" | clarity             |
| 109  | 17      | replace "a" with "our"                                    | clarity             |
| 109  | 18      | replace "are" with "our"                                  | misheard            |
| 120  | 17      | replace "elite" with "lead"                               | misheard            |
| 121  | 9       | replace "wine" with "whine"                               | spelling            |
| 127  | 9       | replace "health" with "hell"                              | misheard            |
| 133  | 7       | replace "his" with "it's"                                 | clarity             |
| 149  | 14      | replace "then" with "than"                                | misheard            |
| 150  | 10      | replace "profit" with "profitable"                        | clarity             |
| 151  | 17      | replace "were" with "we're"                               | typo?               |
| 163  | 7       | replace "MPD" with "NPD"                                  | misheard            |
| 163  | 18      | replace "MDP would sell out" to "NPD was sell through"    | clarity             |
| 187  | 16      | replace "what" with "about"                               | clarity / misheard? |

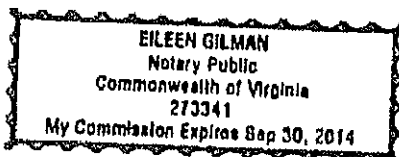
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(correct spelling is Stephen)

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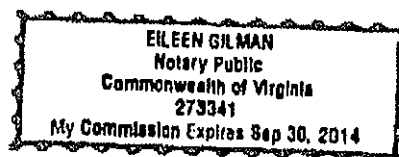
NAME OF CASE: IN RE: CRT Antitrust Litigation  
DATE OF DEPOSITION: April 23, 2014  
NAME OF DEPOSEE: Steven Deason

| PAGE   | LINE (S) | CHANGE                                | REASON             |
|--|----------|---------------------------------------|--------------------|
| <u>Part Three - Continued from prior pages</u> |          |                                       |                    |
| 203  | 14       | replace "Kahn's" with "Conns"         | spelling           |
| 212  | 19       | replace "we cap" with "we're clear"   | clarity            |
| 228  | 12       | replace "So I am" with "No, I am not" | misheard / clarity |
| 250  | 12       | replace "said" with "set"             | misheard           |

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 21 DAY OF MAY, 2014

  
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9.30.2014  
MY COMMISSION EXPIRES:



VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

THE STATE OF ILLINOIS, by its Attorney  
General, Lisa Madigan,

Plaintiff,

v.

HITACHI, LTD., et al,

Defendants.

File No. CL16-2739-2

Certificate of Service

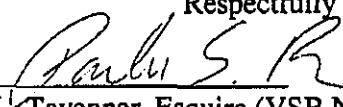
Pursuant to the Rules of the Circuit Court of Virginia, I herby certify under penalty of perjury that on July 7, 2016, I caused a true and exact copy of the following documents to be served via first class mail and/or certified mail upon the parties as set forth on the service list attached hereto as Exhibit A:

1. Responses and Objections of Alfred H. Siegel, Solely in his Capacity as Trustee for the Circuit City Stores, Inc. Liquidating Trust, to Foreign Subpoena / Subpoena *Duces Tecum*.

Dated: July 7, 2016

Respectfully submitted,

/s/

  
Lynn L. Tavenner, Esquire (VSB No. 30083)

Paula S. Beran, Esquire (VSB No. 34679)

David N. Tabakin, Esquire (VSB No. 82709)

Tavenner & Beran

20 North 8<sup>th</sup> Street

Richmond, Virginia 23219

Telephone: (804) 783-8300

Telecopier: (804) 783-0178

**Exhibit A**

Daniel Cummings  
Rothschild, Barry & Myers LLP  
55 West Monroe Street, Suite 3900  
Chicago, IL 60603-5017